

HOUSE BILL NO. 4001

IN THE LEGISLATURE OF THE STATE OF ALASKA

THIRTIETH LEGISLATURE - FOURTH SPECIAL SESSION

BY THE HOUSE RULES COMMITTEE BY REQUEST OF THE GOVERNOR

Introduced: 10/23/17

Referred: Finance

A BILL

FOR AN ACT ENTITLED

1 "An Act imposing a tax on wages and net earnings from self-employment; relating to the
2 administration and enforcement of the wages and net earnings from self-employment
3 tax; and providing for an effective date."

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

5 * **Section 1.** AS 43.05.045(a) is amended to read:

6 (a) Except as provided in AS 43.45.051(f), or unless [UNLESS] an
7 exemption is granted under (b) of this section, a taxpayer required to submit a return
8 or report for a tax levied under this title or for any other tax administered by the
9 department shall submit the return or report electronically in a format prescribed by
10 the department. Failure to comply with this section may result in a civil penalty under
11 AS 43.05.220(f). If a law under this title requires a report or return or a portion of a
12 report or return to be in writing, an electronically filed report or return satisfies this
13 section. A taxpayer shall submit attachments to a report or return required under this
14 title electronically.

* **Sec. 2.** AS 43.45 is amended by adding new sections to read:

Chapter 45. Wages and Net Earnings Tax.

Sec. 43.45.011. Tax imposed. (a) A tax is imposed on an individual with wages from a source in the state or net earnings from self-employment from a source in the state. The tax is 1.5 percent of

(1) wages from a source in the state; and

(2) net earnings from self-employment from a source in the state.

(b) When calculating earnings from self-employment, a taxpayer may not make the deduction for net operating losses provided under 26 U.S.C. 172(b)(1)(A) (Internal Revenue Code).

(c) Notwithstanding any other provision of this section, for a taxable year, the tax imposed on an individual may not exceed the greater of twice the value of the permanent fund dividend determined under AS 43.23.025 for the calendar year preceding a taxpayer's taxable year, or \$2,200 multiplied by the percentage increase in the Consumer Price Index for all urban consumers, all items, for the Anchorage metropolitan area from July 1, 2017 using the base period 1982-84=100, compiled by the Bureau of Labor Statistics, United States Department of Labor.

Sec. 43.45.021. Net earnings from self-employment and wages from a source in the state. (a) Net earnings from self-employment from a source in the state subject to tax under AS 43.45.011 include net earnings from self-employment that are

(1) a taxpayer's distributive share of an item of income, gain, loss, or deduction of a partnership, as determined under AS 43.45.031;

(2) income or loss of a business conducted by a taxpayer, other than income or loss from a partnership, as determined under AS 43.45.031;

(3) income derived from a business, trade, profession, occupation, or employment carried on in the state, including income 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 paragraph does not include income from an activity of an individual whose presence in the state is casual,

1 isolated, inconsequential, or ancillary to out-of-state activities, except that, if a
 2 business, trade, profession, occupation, or employment is carried on partly in and
 3 partly outside the state, other than for the rendering of purely personal services by the
 4 individual, the taxable income derived from or connected with a source in the state is
 5 determined under AS 43.19 (Multistate Tax Compact);

6 (4) income or a gain from the disposition of an asset if the acquisition,
 7 management, or disposition of the asset constitutes an integral part of the taxpayer's
 8 regular trade or business operation;

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

13 (b) A deduction included in a taxpayer's net earnings from self-employment
 14 must be based solely on income or a gain, loss, or deduction derived from or
 15 connected with a source in the state. A taxpayer shall treat a deduction under this
 16 subsection in the same manner as the corresponding federal deduction, unless the
 17 department requires otherwise in regulation.

18 (c) Wages from a source in the state subject to tax under AS 43.45.011 include
 19 wages that are earned while an individual is physically present in the state. The
 20 department shall adopt regulations to implement and interpret this subsection.

21 **Sec. 43.45.031. Business conducted by a taxpayer; income derived from or**
 22 **connected with a source in the state.** (a) The department shall adopt regulations
 23 governing the amount of income or a gain, loss, or deduction from a business
 24 conducted by a taxpayer that is derived from or connected with a source in the state
 25 for purposes of determining a taxpayer's net earnings from self-employment.
 26 Regulations adopted under this subsection must be consistent with AS 43.19
 27 (Multistate Tax Compact) and AS 43.45.021.

28 (b) The department shall adopt regulations governing the amount of income or
 29 a gain, loss, or deduction that is derived from or connected with a source in the state
 30 and is included in a taxpayer's distributive share of a partnership for purposes of
 31 taxation under this chapter.

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

Sec. 43.45.041. Tax withholding on wages of individuals. Every employer making payment of wages

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

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

Sec. 43.45.051. Returns and payment of taxes. (a) 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.

(b) A self-employed taxpayer shall file with the department a return setting out

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

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

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

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

9 (e) A taxpayer shall notify the department in writing of an alteration in, or
10 modification of, the taxpayer's federal income tax return and of a recomputation of tax
11 or determination of deficiency, whether with or without assessment. A full statement
12 of the facts must accompany the notice. A taxpayer shall file the notice not later than
13 60 days after the final determination of the alteration, modification, recomputation, or
14 deficiency and shall pay any additional tax due under this chapter at that time. In this
15 subsection, "final determination" means the time that an amended federal return is
16 filed, a notice of deficiency or an assessment is mailed to the taxpayer by the Internal
17 Revenue Service, and the taxpayer has exhausted rights of appeal under federal law.

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

21 (g) The department shall adopt regulations to allow a partnership to withhold a
22 partner's income subject to tax under this chapter. A partnership that elects to withhold
23 income under regulations adopted under this subsection may file a composite return.

24 **Sec. 43.45.061. Determination of taxable year and method of accounting.**

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

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

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

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

1 taxable years.

2 **Sec. 43.45.071. Refund of overpayments.** (a) If an individual pays to the
3 department, directly or through withholding by an employer, an amount exceeding the
4 total tax imposed under this chapter during a calendar year and the individual applies
5 for a refund in accordance with regulations adopted by the department, the department
6 shall refund the overpayment to the individual.

7 (b) Interest on an overpayment may not be allowed under AS 43.05.280 if the
8 department refunds the overpayment within 90 days after the date the individual
9 correctly files the refund claim.

10 (c) The department may adopt regulations to coordinate refunds of
11 overpayments under this section with refunds of employment security contributions
12 under AS 23.20.165.

13 (d) An individual may apply for a refund under this section only during the
14 calendar year immediately following the calendar year in which the excess was paid.

15 **Sec. 43.45.081. Report of payments to self-employed individuals.** A person
16 required to report a payment to a self-employed individual to the federal government
17 under 26 U.S.C. shall also report that payment to the department in accordance with
18 regulations adopted by the department.

19 **Sec. 43.45.091. Administration.** (a) The department shall adopt regulations
20 and forms necessary to implement and interpret this chapter, including regulations and
21 forms for the electronic filing and payment of tax due under this chapter. Federal
22 regulations issued under the Internal Revenue Code shall be considered persuasive
23 authority in interpreting any provision of the Internal Revenue Code on which the tax
24 imposed under this chapter relies, whether or not a federal regulation has been
25 specifically incorporated into a department regulation, unless the federal regulation

26 (1) conflicts with a provision of this chapter;

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

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

29 (b) The tax collected by the department under this chapter shall be deposited
30 into the general fund and accounted for separately. Nothing in this section creates a
31 dedicated fund.

(c) The department shall, if it will result in cost savings for the state in the administration of the tax, for employers in the administration of the tax, or both, coordinate collection and reporting of the tax imposed under this chapter with the collection and reporting of employment security contributions by the Department of Labor and Workforce Development, including permitting the Department of Labor and Workforce Development to collect the tax payments and remit them to the department.

Sec. 43.45.101. References to Internal Revenue Code. (a) Unless the provision is inconsistent with this chapter or a regulation adopted under this chapter, the provisions of the Internal Revenue Code as now in effect or hereafter amended that are mentioned in this chapter are incorporated in this chapter by reference and have effect as though fully set out in this chapter.

(b) Sections 26 U.S.C. 6654, 6656, 6662, 6664, 6694, 6695, 6700 - 6702, 6707, 6713, 7201, 7202, 7206, 7207, 7216, 7407, and 7408 (Internal Revenue Code), as those sections read on January 1, 2017, are adopted by reference as a part of this chapter.

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

Sec. 43.45.111. Information released to a banking institution. Notwithstanding AS 43.05.230, information on an individual tax return may be released to a banking institution to verify the direct deposit of a tax refund or correct an error in that deposit.

Sec. 43.45.151. Definitions. In this chapter,

- (1) "employee" has the meaning given in 26 U.S.C. 3401;
- (2) "employer" has the meaning given in 26 U.S.C. 3401;
- (3) "Internal Revenue Code" means the Internal Revenue Code of 1986 (26 U.S.C. 1 et seq.), as amended, and regulations issued thereunder, if the regulations

1 are consistent with this chapter;

2 (4) "net earnings from self-employment" has the meaning given in 26
3 U.S.C. 1402;

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

7 (6) "taxable year" means the calendar year or a fiscal year ending
8 during the calendar year;

9 (7) "taxpayer" means an individual subject to the tax imposed under
10 this chapter;

11 (8) "wages" has the meaning given in 26 U.S.C. 3401.

12 * **Sec. 3.** The uncodified law of the State of Alaska is amended by adding a new section to
13 read:

14 REGULATIONS. The Department of Revenue may adopt regulations to implement
15 sec. 2 of this Act. The regulations take effect under AS 44.62 (Administrative Procedure Act),
16 but not before the effective date of sec. 2 of this Act.

17 * **Sec. 4.** Section 3 of this Act takes effect immediately under AS 01.10.070(c).

18 * **Sec. 5.** Except as provided in sec. 4 of this Act, this Act takes effect January 1, 2019.