

SENATE BILL NO. 139

IN THE LEGISLATURE OF THE STATE OF ALASKA

THIRTIETH LEGISLATURE - SECOND SESSION

BY THE SENATE RULES COMMITTEE BY REQUEST OF THE GOVERNOR

Introduced: 1/16/18

Referred: Labor and Commerce, State Affairs, Finance

A BILL

FOR AN ACT ENTITLED

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

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

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

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

1 title electronically.

2 * **Sec. 2.** AS 43.05.045(a), as amended by sec. 1 of this Act, is amended to read:

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

12 * **Sec. 3.** AS 43.45 is amended by adding new sections to read:

13 **Chapter 45. Wages and Net Earnings Tax.**

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

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

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

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

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

30 **Sec. 43.45.021. Net earnings from self-employment and wages from a**
 31 **source in the state.** (a) Net earnings from self-employment from a source in the state

1 subject to tax under AS 43.45.011 include net earnings from self-employment that are

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

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

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

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

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

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

30 (c) Wages from a source in the state subject to tax under AS 43.45.011 include
31 wages that are earned while an individual is physically present in the state. The

1 department shall adopt regulations to implement and interpret this subsection.

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

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

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

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

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

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

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

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

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

- 1 (B) the name and social security number of the employee;
 2 (C) the total amount of wages for the taxable year; and
 3 (D) the total amount deducted and withheld as tax under this
 4 chapter for the taxable year.

5 **Sec. 43.45.051. Returns and payment of taxes.** (a) A person required to file a
 6 return under this chapter shall file the return on a form or in a format prescribed by the
 7 department. The return is due to the department at the same time and in the same
 8 manner, including extensions, as the taxpayer's federal income tax return to the United
 9 States Internal Revenue Service. A return filed under this chapter must be made under
 10 oath and on penalty of perjury.

11 (b) A self-employed taxpayer shall file with the department a return setting out
 12 (1) the amount of tax due under this chapter; and
 13 (2) other information necessary to carry out this chapter, as required by
 14 the department in regulation.

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

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

21 (e) A taxpayer shall notify the department in writing of an alteration in, or
 22 modification of, the taxpayer's federal income tax return and of a recomputation of tax
 23 or determination of deficiency, whether with or without assessment. A full statement
 24 of the facts must accompany the notice. A taxpayer shall file the notice not later than
 25 60 days after the final determination of the alteration, modification, recomputation, or
 26 deficiency and shall pay any additional tax due under this chapter at that time. In this
 27 subsection, "final determination" means the time that an amended federal return is
 28 filed, a notice of deficiency or an assessment is mailed to the taxpayer by the Internal
 29 Revenue Service, and the taxpayer has exhausted rights of appeal under federal law.

30 (f) An individual is not required to file a return under this section
 31 electronically, but a person employed to prepare and file income tax returns shall file

1 the returns for those individuals electronically.

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

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

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

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

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

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

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

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

22 (c) The department may adopt regulations to coordinate refunds of
23 overpayments under this section with refunds of employment security contributions
24 under AS 23.20.165.

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

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

31 **Sec. 43.45.091. Administration.** (a) The department shall adopt regulations

1 and forms necessary to implement and interpret this chapter, including regulations and
2 forms for the electronic filing and payment of tax due under this chapter. Federal
3 regulations issued under the Internal Revenue Code shall be considered persuasive
4 authority in interpreting any provision of the Internal Revenue Code on which the tax
5 imposed under this chapter relies, whether or not a federal regulation has been
6 specifically incorporated into a department regulation, unless the federal regulation

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

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

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

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

17 **Sec. 43.45.101. 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, 6656, 6662, 6664, 6694, 6695, 6700 - 6702,
23 6707, 6713, 7201, 7202, 7206, 7207, 7216, 7407, and 7408 (Internal Revenue Code),
24 as 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.

1 **Sec. 43.45.111. Information released to a banking institution.**

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

5 **Sec. 43.45.120. Alaska economic recovery tax account.** (a) The Alaska
6 economic recovery tax account is established in the general fund, consisting of tax
7 receipts collected under this chapter and money appropriated to the account by the
8 legislature. The interest earned on the Alaska economic recovery tax account shall be
9 deposited in the general fund.

10 (b) The legislature may appropriate the annual estimated balance of the Alaska
11 economic recovery tax account to fund capital projects and grants, including
12 construction, repair, and deferred maintenance of local government and state public
13 facilities, municipal impact grants, community grants, housing programs and grants,
14 and energy efficiency programs.

15 (c) Money in the Alaska economic recovery tax account does not lapse.

16 (d) Nothing in this section creates a dedicated fund.

17 **Sec. 43.45.151. Definitions.** In this chapter,

18 (1) "employee" has the meaning given in 26 U.S.C. 3401;

19 (2) "employer" has the meaning given in 26 U.S.C. 3401;

20 (3) "Internal Revenue Code" means the Internal Revenue Code of 1986
21 (26 U.S.C. 1 et seq.), as amended, and regulations issued thereunder, if the regulations
22 are consistent with this chapter;

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

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

28 (6) "taxable year" means the calendar year or a fiscal year ending
29 during the calendar year;

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

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

2 * **Sec. 4.** AS 43.45.120(a), added by sec. 3 of this Act, is amended to read:

3 (a) The Alaska economic recovery tax account is established in the general
4 fund, consisting of tax receipts collected under **former AS 43.45.011 - 43.45.111 and**
5 **43.45.151** [THIS CHAPTER] and money appropriated to the account by the
6 legislature. The interest earned on the Alaska economic recovery tax account shall be
7 deposited in the general fund.

8 * **Sec. 5.** AS 43.45.011, 43.45.021, 43.45.031, 43.45.041, 43.45.051, 43.45.061, 43.45.071,
9 43.45.081, 43.45.091, 43.45.101, 43.45.111, and 43.45.151 are repealed July 1, 2021.

10 * **Sec. 6.** The uncodified law of the State of Alaska is amended by adding a new section to
11 read:

12 TRANSITION: REGULATIONS. The Department of Revenue may adopt regulations
13 to implement secs. 1 - 5 of this Act. The regulations take effect under AS 44.62
14 (Administrative Procedure Act), but not before the effective date of secs. 1 - 5 of this Act.

15 * **Sec. 7.** Sections 2 and 4 of this Act take effect July 1, 2021.

16 * **Sec. 8.** Section 6 of this Act takes effect immediately under AS 01.10.070(c).

17 * **Sec. 9.** Except as provided in secs. 7 and 8 of this Act, this Act takes effect January 1,
18 2019.