

HOUSE BILL NO. 214

IN THE LEGISLATURE OF THE STATE OF ALASKA

THIRTY-SECOND LEGISLATURE - FIRST SESSION

BY THE HOUSE SPECIAL COMMITTEE ON WAYS AND MEANS

Introduced: 5/18/21

Referred: House Special Committee on Ways and Means, State Affairs, Finance

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to the taxation of income of individuals; repealing tax credits applied
2 against the tax on individuals under the Alaska Net Income Tax Act; and providing for
3 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 43.22.090(g), 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 is amended by adding a new chapter to read:

Chapter 22. 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 individual;

(2) nonresident individual that is taxable under AS 43.22.050.

(b) The tax under this section for an individual or individuals filing jointly is one percent of taxable income.

(c) Two resident individuals who file a joint federal income tax return may determine the tax imposed by this chapter jointly under this section.

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

(1) individually; or

(2) jointly as if both individuals were residents; the income of the individuals filing jointly under this paragraph is not subject to the calculation under AS 43.22.020.

Sec. 43.22.020. Calculation of tax on a nonresident individual. (a) Except as otherwise provided in (b) of this section, the tax on a nonresident individual is the product of

(1) 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; and

(2) a fraction, the

(A) numerator of which is the nonresident individual's income taxable under AS 43.22.050; and

(B) denominator of which is the nonresident individual's taxable income computed as if the nonresident individual were a resident individual.

(b) If a nonresident individual's taxable income computed under (a)(2)(B) of this section is less than the nonresident individual's income taxable under (a)(2)(A) of this section, the tax imposed by this chapter is on the nonresident individual's taxable

1 income under AS 43.22.050.

2 **Sec. 43.22.030. Credit for income taxes imposed by other jurisdictions. (a)**

3 A resident individual or part-year resident individual is allowed a credit against the tax
4 due under this chapter for an income tax that was imposed on the resident or part-year
5 resident for the taxable year by another state or the political subdivision of another
6 state on income derived from or connected with that state or political subdivision.

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

8 (1) for a resident individual may not exceed the individual's tax due
9 under this chapter before credits are applied, multiplied by a fraction, the numerator of
10 which is the portion of the individual's taxable income that is derived from or
11 connected with a source in another state or the political subdivision of another state
12 and the denominator of which is the resident individual's income;

13 (2) for a part-year resident individual may not exceed the individual's
14 tax due for the period of state residency before credits are applied, multiplied by a
15 fraction, the numerator of which is the individual's taxable income derived from or
16 connected with a source in another state or the political subdivision of another state
17 during the period of state residency and the denominator of which is the part-year
18 resident individual's taxable income during the period of state residency;

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

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

(d) A taxpayer is not allowed a credit under this section for taxes paid to another jurisdiction if the taxpayer claims a credit against the income tax imposed by the other jurisdiction for the tax payable under this chapter.

Sec. 43.22.040. Taxable income; general rule. (a) In this chapter, taxable income is the taxpayer's federal adjusted gross income for the taxable year minus, if included in federal adjusted gross income,

(1) income that is exempt from taxation by a state under federal law; and

(2) a permanent fund dividend received by the taxpayer or the taxpayer's dependent under AS 43.23.

(b) In addition to the adjustments made to taxable income under (a) of this section, a taxpayer may receive a reduction from federal adjusted gross income. The reduction under this subsection for

(1) an individual resident taxpayer is \$15,000;

(2) two resident taxpayers filing jointly is \$30,000;

(3) an individual nonresident is the product of \$15,000 and a fraction, the numerator of which is the nonresident individual's income taxable under AS 43.22.050, computed without the reduction under this subsection, and the denominator of which is the nonresident individual's taxable income computed as if the nonresident individual were a resident individual and without the reduction under this subsection; the reduction under this paragraph may not exceed \$15,000 for each exemption claimed;

(4) two nonresident individuals filing jointly is the product of \$30,000 and a fraction, the numerator of which is the nonresident individuals' income taxable under AS 43.22.050, computed without the reduction under this subsection, and the denominator of which is the nonresident individuals' taxable income computed as if the nonresident individuals were resident individuals and without the reduction under this subsection; the reduction under this paragraph may not exceed \$30,000 for each exemption claimed.

Sec. 43.22.050. Nonresident individuals; taxable income. The taxable income of a nonresident individual is the nonresident individual's income derived from

1 or connected with a source in the state.

2 **Sec. 43.22.060. Business conducted by a nonresident individual; taxable**
 3 **income.** (a) The department shall adopt regulations governing the amount of income
 4 or the amount of a gain, loss, or deduction from a business conducted by a nonresident
 5 individual that is derived from or connected with a source in the state for purposes of
 6 determining taxable income. Regulations adopted under this subsection must be
 7 consistent with AS 43.19 (Multistate Tax Compact).

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

10 **Sec. 43.22.070. Part-year resident individual; taxable income.** (a) Except as
 11 otherwise provided in this section, the taxable income of a part-year resident
 12 individual is the sum of

13 (1) the taxable income of the part-year resident individual during the
 14 period of residency; and

15 (2) the taxable income derived from or connected with a source in the
 16 state for the period of nonresidency of the individual.

17 (b) The department shall adopt regulations to determine the taxable income of
 18 a part-year resident taxpayer.

19 **Sec. 43.22.080. Determination of taxable year and method of accounting.**
 20 (a) For purposes of the tax imposed under this chapter, a taxpayer's

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

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

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

28 **Sec. 43.22.090. Returns and payment of taxes.** (a) A taxpayer shall file with
 29 the department a return setting out

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

31 (2) other information necessary to carry out this chapter, as required by

1 the department in regulation.

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

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

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

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

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

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

individual shall file the return for that individual electronically.

Sec. 43.22.100. 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 an employee on or before January 31 of the succeeding year, or within 30 days after a request by the employee after an 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. 43.22.110. 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 persons 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, after 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, transaction, or payment fails 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 required to be made from one person to a related person, the related persons 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, management fees, services, inventory, tangible personal property, intangible property, and real property.

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

(d) The tax collected by the department under this chapter shall be deposited into the general fund and accounted for separately.

Sec. 43.22.120. References to Internal Revenue Code. (a) Sections 26 U.S.C. 6654, 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, 2021, are incorporated by reference as a part of this chapter and, if conflicting, supersede provisions in AS 43.05 and AS 43.10.

(b) When provisions of the Internal Revenue Code incorporated by reference under (a) of this section refer to rules and regulations adopted by the United States

Commissioner of Internal Revenue, they are regarded as regulations adopted by the department under this chapter, unless the department adopts specific regulations in their place.

Sec. 43.22.130. 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. 43.22.200. Definitions. In this chapter,

(1) "domicile" means an individual's true, fixed, principal, and permanent home, to which the individual intends to return even if currently living elsewhere; if an individual has two or more homes, "domicile" means the home that the individual regards and uses as the individual's more permanent home; once established, a domicile remains the individual's domicile until the 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, hunting, or trapping license;

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

(3) "Internal Revenue Code" means the Internal Revenue Code (26 U.S.C. 1 et seq.), as amended;

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

(5) "part-year resident individual" means an individual who is a resident of the state for a portion of but not the entire taxable year;

(6) "related person" means a person that satisfies the definition of "related persons" in 26 U.S.C. 144 or 147 or a person in a relationship, as described in 26 U.S.C. 267(b) (Internal Revenue Code);

(7) "resident individual" means an individual who

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

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

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

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

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

(10) "taxpayer" means an individual subject to a tax imposed by this chapter.

* **Sec. 3.** AS 43.05.085; AS 43.20.012(b), and 43.20.013 are repealed.

* **Sec. 4.** The uncodified law of the State of Alaska is amended by adding a new section to

1 read:

2 APPLICABILITY. AS 43.22, added by sec. 2 of this Act, applies to income received
3 on or after the effective date of sec. 2 of this Act.

4 * **Sec. 5.** The uncodified law of the State of Alaska is amended by adding a new section to
5 read:

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

9 * **Sec. 6.** Section 5 of this Act takes effect immediately under AS 01.10.070(c).

10 * **Sec. 7.** Except as provided in sec. 6 of this Act, this Act takes effect January 1, 2022.