

1 IN THE HOUSE

BY THE COMMITTEE ON FINANCE

2 COMMITTEE SUBSTITUTE FOR HOUSE BILL NO. 198

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 FIRST LEGISLATURE - FIRST SESSION

5 A BILL

6 For an Act entitled: "An Act relating to the Alaska Net Income  
7 Tax Act and providing for allocation and  
8 apportionment of taxpayer's gross income;  
9 and providing for an effective date."

10 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

11 Section 1. Subsection C of Sec. 5, Ch. 115, SLA 1949, as  
12 repealed and re-enacted by Ch. 132, SLA 1951, and as amended by  
13 Ch. 64, SLA 1957, is hereby repealed and re-enacted to read as  
14 follows:

15 C. ALLOCATION AND APPORTIONMENT

16 (1) Definitions: As used in this Subsection,  
17 unless the context otherwise requires:

18 (a) "Business income" means income arising  
19 from transactions and activity in the regular course of the  
20 taxpayer's trade or business and includes income from tan-  
21 gible and intangible property if the acquisition, management,  
22 and disposition of the property constitute integral parts of  
23 the taxpayer's regular trade or business operations.

24 (b) "Commercial domicile" means the principal  
25 place from which the trade or business of the taxpayer is  
26 directed or managed.

27 (c) "Compensation" means wages, salaries,  
28 commissions and any other form of remuneration paid to  
29 employees for personal services.

1 (d) "Financial organization" means any  
2 bank, trust company, savings bank, (industrial bank, land  
3 bank, safe deposit company ), private banker, savings and  
4 loan association, credit union, (cooperative bank), invest-  
5 ment company, or any type of insurance company.

6 (e) "Non-business income" means all income  
7 other than business income.

8 (f) "Sales" means all gross receipts of the  
9 taxpayer not allocated under Subsection C(6) through (10)  
10 herein.

11 (g) "State" means any state of the United  
12 States, the District of Columbia, the Commonwealth of Puerto  
13 Rico, any territory or possession of the United States, and  
14 any foreign country or political subdivision thereof.

15 (2) Taxpayer liable. Any taxpayer having income  
16 from business activity which is taxable both within and without  
17 this state or income from any other sources both within and  
18 without this state shall allocate and apportion his net income  
19 as provided in this Subsection.

20 (3) Taxability in other state. For purposes of  
21 allocation and apportionment of income under this Subsection a  
22 taxpayer is taxable in another state if (1) in that state he is  
23 subject to a net income tax, a franchise tax measured by net  
24 income, a franchise tax for the privilege of doing business, or  
25 a corporate stock tax, or (2) that state has jurisdiction to  
26 subject the taxpayer to a net income tax regardless of whether,  
27 in fact, the state does or does not.

28 (4) Direct allocation. If a taxpayer's gross  
29 income is derived from sources both within and without the state

1 and the part within is so separate and distinct from and un-  
2 connected with the part without that the net income from the  
3 part within can be determined without regard to the part without,  
4 then the part without the state shall not be considered in com-  
5 puting the income tax and Subsection C (11) through (19) herein  
6 shall not be applicable.

7 (5) Employees of interstate carriers. The tax  
8 levied hereunder shall apply to that portion of the voyage pay  
9 of vessel personnel of interstate carriers engaged in the Alaska  
10 trade which is earned in the waters of the state. The tax shall  
11 likewise apply to that portion of the pay earned in the state of  
12 the personnel of carriers operating vehicles or airplanes on land  
13 or in the air on routes to and from the state. In determining  
14 portion of the voyage pay of vessel personnel earned in the waters  
15 of Alaska, the method of allocation provided for in Subsection C  
16 (20) herein shall be used.

17 (6) Allocation of non-business income. Rents and  
18 royalties from real or tangible personal property, capital gains,  
19 interest, dividends, or patent or copyright royalties, to the  
20 extent that they constitute non-business income, shall be alloca-  
21 ted as provided in Subsection C (7) through (10) herein.

22 (7) Net rents and royalties.

23 (a) Net rents and royalties from real  
24 property located in this state are allocable to this state.

25 (b) Net rent and royalties from tangible  
26 personal property are allocable to this state:

27 (1) if and to the extent that the  
28 property is utilized in this state, or

29 (2) in their entirety if the taxpayer's

1 commercial domicile is in this state and the taxpayer  
2 is not organized under the laws of or taxable in the  
3 state in which the property is utilized.

4 (c) The extent of utilization of tangible  
5 personal property in a state is determined by multiplying  
6 the rents and royalties by a fraction, the numerator of which  
7 is the number of days of physical location of the property  
8 in the state during the rental or royalty period in the  
9 taxable year and the denominator of which is the number of  
10 days of physical location of the property everywhere during  
11 all rental or royalty periods in the taxable year. If the  
12 physical location of the property during the rental or royalty  
13 period is unknown or unascertainable by the taxpayer, tan-  
14 gible personal property is utilized in the state in which the  
15 property was located at the time the rental or royalty payer  
16 obtained possession.

17 (8) Capital gains and losses.

18 (a) Capital gains and losses from sales of  
19 real property located in this state are allocable to this  
20 state.

21 (b) Capital gains and losses from sales of  
22 tangible personal property are allocable to this state if

23 (1) the property had a situs in this  
24 state at the time of the sale, or

25 (2) the taxpayer's commercial domicile  
26 is in this state and the taxpayer is not taxable in the  
27 state in which the property had a situs.

28 (c) Capital gains and losses from sales of  
29 intangible personal property are allocable to this state

1 if the taxpayer's commercial domicile is in this state.

2 (9) Interest and dividends. Interest and dividends  
3 are allocable to this state if the taxpayer's commercial domicile  
4 is in this state.

5 (10) Patent and copyright royalties.

6 (a) Patent and copyright royalties are alloca-  
7 ble to this state:

8 (1) if and to the extent that the  
9 patent or copyright is utilized by the payer in this  
10 state, or

11 (2) if and to the extent that the  
12 patent or copyright is utilized by the payer in a  
13 state in which the taxpayer is not taxable and the  
14 taxpayer's commercial domicile is in this state.

15 (b) A patent is utilized in a state to the  
16 extent that it is employed in production, fabrication, manu-  
17 facturing, or other processing in the state or to the extent  
18 that a patented product is produced in the state. If the  
19 basis of receipts from patent royalties does not permit allo-  
20 cation to states or if the accounting procedures do not reflect  
21 states of utilization, the patent is utilized in the state in  
22 which the taxpayer's commercial domicile is located.

23 (c) A copyright is utilized in a state to the  
24 extent that printing or other publication originates in the  
25 state. If the basis of receipts from copyright royalties  
26 does not permit allocation to states or if the accounting  
27 procedures do not reflect states of utilization,  
28 the copyright is utilized in the state in

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1           which the taxpayer's commercial domicile is located.

2           (11) Allocation of business income. All business  
3 income which cannot be directly apportioned and allocated to this  
4 state shall be apportioned to this state by multiplying the income  
5 by a fraction, the numerator of which is the property factor plus  
6 the payroll factor plus the sales factor, and the denominator of  
7 which is three.

8           (12) Property factor. The property factor is a  
9 fraction, the numerator of which is the average value of the  
10 taxpayer's real and tangible personal property owned or rented  
11 and used in this state during the tax period and the denominator  
12 of which is the average value of all the taxpayer's real and  
13 tangible personal property owned or rented and used during the  
14 tax period.

15           (13) Valuation of property. Property owned by the  
16 taxpayer is valued at its original cost. Property rented by the  
17 taxpayer is valued at eight times the net annual rental rate.  
18 Net annual rental rate is the annual rental rate paid by the tax-  
19 payer less any annual rental rate received by the taxpayer from  
20 sub-rentals.

21           (14) Average value of property. The average value  
22 of property shall be determined by averaging the values at the  
23 beginning and ending of the tax period but the Commissioner of  
24 Revenue may require the averaging of monthly values during the tax  
25 period if reasonably required to reflect properly the average  
26 value of the taxpayer's property.

27           (15) Payroll factor. The payroll factor is a  
28 fraction, the numerator of which is the total amount paid in this  
29 state during the tax period by the taxpayer for compensation, and  
the denominator of which is the total compensation paid everywhere

1 during the tax period.

2 (16) Compensation paid in state. Compensation  
3 is paid in this state if:

4 (a) the individual's service is performed  
5 entirely within the state; or

6 (b) the individual's service is performed  
7 both within and without the state, but the service performed  
8 without the state is incidental to the individual's service  
9 within the state; or

10 (c) some of the service is performed in  
11 the state and (1) the base of operations or, if there is  
12 no base of operations, the place from which the service is  
13 directed or controlled is in the state, or (2) the base of  
14 operations or the place from which the service is directed  
15 or controlled is not in any state in which some part of the  
16 service is performed, but the individual's residence is in  
17 this state.

18 (17) Sales factor. The sales factor is a fraction,  
19 the numerator of which is the total sales of the taxpayer in this  
20 state during the tax period, and the denominator of which is the  
21 total sales of the taxpayer everywhere during the tax period.

22 (18) Situs of sales of tangible personal property.  
23 Sales of tangible personal property are in this state if:

24 (a) the property is delivered or shipped to  
25 a purchaser, other than the United States government, within  
26 this state regardless of the f.o.b. point or other conditions  
27 of the sale; or

28 (b) the property is shipped from an office,  
29 store, warehouse, factory, or other place of storage in this

1 state and (1) the purchaser is the United States government  
2 or (2) the taxpayer is not taxable in the state of the  
3 purchaser.

4 (19) Situs of sales of other than tangible  
5 personal property. Sales, other than sales of tangible personal  
6 property, are in this state if:

7 (a) the income-producing activity is performed  
8 in this state; or

9 (b) the income-producing activity is performed  
10 both in and outside this state and a greater proportion of  
11 the income-producing activity is performed in this state than  
12 in any other state, based on costs of performance.

13 (20) Determination of property and payroll factors  
14 for freight and passenger carriers. The value of vessels opera-  
15 ting on the high seas and compensation of employees engaged in  
16 operating such vessels shall be apportioned to the state in the  
17 ratio which the number of days spent in ports within the state  
18 bears to the total number of days spent in ports within and with-  
19 out the state. The term "days spent in ports" shall not include  
20 periods when ships are tied up because of strikes or withheld  
21 from the Alaska service for repairs, or because of seasonal  
22 reduction of service. Days in port shall be computed by dividing  
23 the aggregate number of hours in all ports by 24. The value of  
24 aircraft and automotive vehicles operating as freight and  
25 passenger carriers from, to and within the state and compensation  
26 of employees engaged in such operations, shall be apportioned to  
27 the state in the ratio which the number of days during which such  
28 services are rendered with the state bears to the total number  
29 of days during which such services are rendered within and without

1 the state.

2 (21) Apportionment by Commissioner of Revenue.

3 If the allocation and apportionment provisions of this Subsection  
4 do not fairly represent the extent of the taxpayer's business  
5 activity in this state, the taxpayer may petition for or the  
6 Commissioner of Revenue may require, in respect to all or any  
7 part of the taxpayer's business activity, if reasonable:

8 (a) the exclusion of any one or more of the  
9 factors;

10 (b) the inclusion of one or more additional  
11 factors which will fairly represent the taxpayer's business  
12 activity in this state; or

13 (c) the employment of any other method to  
14 effectuate an equitable allocation and apportionment of the  
15 taxpayer's income.

16 The Commissioner of Revenue is specifically authorized to use  
17 revenue miles traveled both within and without the state as a  
18 factor in apportioning the income of carriers, if in the opinion  
19 of the Commissioner of Revenue, the use of such factor would  
20 better represent the extent of the carrier's business activity  
21 in the state. The Commissioner of Revenue may promulgate proper  
22 apportionment rules and regulations in conformity with this Sub-  
23 section for general application in similar cases. In the case  
24 of two or more organizations, trades or businesses owned or con-  
25 trolled directly or indirectly by the same interest, the Commis-  
26 sioner of Revenue is authorized to distribute, apportion, or  
27 allocate the tax where such action is necessary to prevent evasion  
28 of payment.

29 Sec. 2. Subsection D of Sec. 5, Ch. 115, SLA 1949 as repealed  
CS for HB #198

1 and reenacted by Ch. 132, SIA 1951 is hereby repealed.

2 Sec. 3. Subsection E of Section 5, Chapter 115, SIA 1949, as  
3 repealed and reenacted by Ch. 132, SIA 1951, is amended to read  
4 as follows:

5 D. [E.] EXEMPTION. The tax levied hereunder shall not  
6 apply to the pay of members of the armed forces of the United  
7 States or auxiliary branches thereof.

8 Sec. 4. This Act shall take effect on January 1, 1960.  
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