

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 repealing and re-enacting Subsection C of
10 Sec. 5, Ch. 115, SLA 1949, as repealed and
11 re-enacted by Ch. 132, SLA 1951, as amended
12 by Ch. 64, SLA 1957; repealing Subsection D
13 of Sec. 5, Ch. 115, SLA 1949 as repealed and
14 re-enacted by Ch. 132, SLA 1951; amending
15 Subsection E of Sec. 5, Ch. 115, SLA 1949,
16 as repealed and re-enacted by Ch. 132, SLA
17 1951; and providing for an effective date."

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

19 Section 1. Subsection C of Sec. 5, Ch. 115, SLA 1949, as
20 repealed and re-enacted by Ch. 132, SLA 1951, and as amended by
21 Ch. 64, SLA 1957, is hereby repealed and re-enacted to read as
22 follows:

23 C. ALLOCATION AND APPORTIONMENT

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

26 (a) "Business income" means income arising
27 from transactions and activity in the regular course of the
28 taxpayer's trade or business and includes income from tan-
29 gible and intangible property if the acquisition, management,

1 and disposition of the property constitute integral parts of
2 the taxpayer's regular trade or business operations.

3 (b) "Commercial domicile" means the principal
4 place from which the trade or business of the taxpayer is
5 directed or managed.

6 (c) "Compensation" means wages, salaries,
7 commissions and any other form of remuneration paid to
8 employees for personal services.

9 (d) "Financial organization" means any
10 bank, trust company, savings bank, (industrial bank, land
11 bank, safe deposit company), private banker, savings and
12 loan association, credit union, (cooperative bank), invest-
13 ment company, or any type of insurance company.

14 (e) "Non-business income" means all income
15 other than business income.

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

19 (g) "State" means any state of the United
20 States, the District of Columbia, the Commonwealth of Puerto
21 Rico, any territory or possession of the United States, and
22 any foreign country or political subdivision thereof.

23 (2) Taxpayer liable. Any taxpayer having income
24 from business activity which is taxable both within and without
25 this state or income from any other sources both within and
26 without this state shall allocate and apportion his net income
27 as provided in this Subsection.

28 (3) Taxability in other state. For purposes of
29 allocation and apportionment of income under this Subsection a
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1 taxpayer is taxable in another state if (1) in that state he is
2 subject to a net income tax, a franchise tax measured by net
3 income, a franchise tax for the privilege of doing business, or
4 a corporate stock tax, or (2) that state has jurisdiction to
5 subject the taxpayer to a net income tax regardless of whether,
6 in fact, the state does or does not.

7 (4) Direct allocation. If a taxpayer's gross
8 income is derived from sources both within and without the state
9 and the part within is so separate and distinct from and un-
10 connected with the part without that the net income from the
11 part within can be determined without regard to the part without,
12 then the part without the state shall not be considered in com-
13 puting the income tax and Subsection C (11) through (19) herein
14 shall not be applicable.

15 (5) Employees of interstate carriers. The tax
16 levied hereunder shall apply to that portion of the voyage pay
17 of vessel personnel of interstate carriers engaged in the Alaska
18 trade which is earned in the waters of the state. The tax shall
19 likewise apply to that portion of the pay earned in the state of
20 the personnel of carriers operating vehicles or airplanes on land
21 or in the air on routes to and from the state. In determining
22 portion of the voyage pay of vessel personnel earned in the waters
23 of Alaska, the method of allocation provided for in Subsection C
24 (20) herein shall be used.

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

1 (7) Net rents and royalties.

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

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

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

8 (2) in their entirety if the taxpayer's
9 commercial domicile is in this state and the taxpayer
10 is not organized under the laws of or taxable in the
11 state in which the property is utilized.

12 (c) The extent of utilization of tangible
13 personal property in a state is determined by multiplying
14 the rents and royalties by a fraction, the numerator of which
15 is the number of days of physical location of the property
16 in the state during the rental or royalty period in the
17 taxable year and the denominator of which is the number of
18 days of physical location of the property everywhere during
19 all rental or royalty periods in the taxable year. If the
20 physical location of the property during the rental or royalty
21 period is unknown or unascertainable by the taxpayer, tan-
22 gible personal property is utilized in the state in which the
23 property was located at the time the rental or royalty payer
24 obtained possession.

25 (8) Capital gains and losses.

26 (a) Capital gains and losses from sales of
27 real property located in this state are allocable to this
28 state.

29 (b) Capital gains and losses from sales of

1 tangible personal property are allocable to this state if

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

4 (2) the taxpayer's commercial domicile
5 is in this state and the taxpayer is not taxable in the
6 state in which the property had a situs.

7 (c) Capital gains and losses from sales of
8 intangible personal property are allocable to this state
9 if the taxpayer's commercial domicile is in this state.

10 (9) Interest and dividends. Interest and dividends
11 are allocable to this state if the taxpayer's commercial domicile
12 is in this state.

13 (10) Patent and copyright royalties.

14 (a) Patent and copyright royalties are allocable
15 to this state:

16 (1) if and to the extent that the
17 patent or copyright is utilized by the payer in this
18 state, or

19 (2) if and to the extent that the
20 patent or copyright is utilized by the payer in a
21 state in which the taxpayer is not taxable and the
22 taxpayer's commercial domicile is in this state.

23 (b) A patent is utilized in a state to the
24 extent that it is employed in production, fabrication, manu-
25 facturing, or other processing in the state or to the extent
26 that a patented product is produced in the state. If the
27 basis of receipts from patent royalties does not permit allo-
28 cation to states or if the accounting procedures do not reflect
29 states of utilization, the patent is utilized in the state in

1 which the taxpayer's commercial domicile is located.

2 (c) A copyright is utilized in a state to the
3 extent that printing or other publication originates in the
4 state. If the basis of receipts from copyright royalties
5 does not permit allocation to states or if the accounting
6 procedures do not reflect states of utilization, the
7 copyright is utilized in the state in which the taxpayer's
8 commercial domicile is located.

9 (11) Allocation of business income. All business
10 income which cannot be directly apportioned and allocated to this
11 state shall be apportioned to this state by multiplying the income
12 by a fraction, the numerator of which is the property factor plus
13 the payroll factor plus the sales factor, and the denominator of
14 which is three.

15 (12) Property factor. The property factor is a
16 fraction, the numerator of which is the average value of the
17 taxpayer's real and tangible personal property owned or rented
18 and used in this state during the tax period and the denominator
19 of which is the average value of all the taxpayer's real and
20 tangible personal property owned or rented and used during the
21 tax period.

22 (13) Valuation of property. Property owned by the
23 taxpayer is valued at its original cost. Property rented by the
24 taxpayer is valued at eight times the net annual rental rate.
25 Net annual rental rate is the annual rental rate paid by the tax-
26 payer less any annual rental rate received by the taxpayer from
27 sub-rentals.

28 (14) Average value of property. The average value
29 of property shall be determined by averaging the values at the

1 beginning and ending of the tax period but the Commissioner of
2 Revenue may require the averaging of monthly values during the tax
3 period if reasonably required to reflect properly the average
4 value of the taxpayer's property.

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

10 (16) Compensation paid in state. Compensation
11 is paid in this state if:

12 (a) the individual's service is performed
13 entirely within the state; or

14 (b) the individual's service is performed
15 both within and without the state, but the service performed
16 without the state is incidental to the individual's service
17 within the state; or

18 (c) some of the service is performed in
19 the state and (1) the base of operations or, if there is
20 no base of operations, the place from which the service is
21 directed or controlled is in the state, or (2) the base of
22 operations or the place from which the service is directed
23 or controlled is not in any state in which some part of the
24 service is performed, but the individual's residence is in
25 this state.

26 (17) Sales factor. The sales factor is a fraction,
27 the numerator of which is the total sales of the taxpayer in this
28 state during the tax period, and the denominator of which is the
29 total sales of the taxpayer everywhere during the tax period.

1 (18) Situs of sales of tangible personal property.

2 Sales of tangible personal property are in this state if:

3 (a) the property is delivered or shipped to
4 a purchaser, other than the United States government, within
5 this state regardless of the f.o.b. point or other conditions
6 of the sale; or

7 (b) the property is shipped from an office,
8 store, warehouse, factory, or other place of storage in this
9 state and (1) the purchaser is the United States government
10 or (2) the taxpayer is not taxable in the state of the
11 purchaser.

12 (19) Situs of sales of other than tangible
13 personal property. Sales, other than sales of tangible personal
14 property, are in this state if:

15 (a) the income-producing activity is performed
16 in this state; or

17 (b) the income-producing activity is performed
18 both in and outside this state and a greater proportion of
19 the income-producing activity is performed in this state than
20 in any other state, based on costs of performance.

21 (20) Determination of property and payroll factors
22 for freight and passenger carriers. The value of vessels opera-
23 ting on the high seas and compensation of employees engaged in
24 operating such vessels shall be apportioned to the state in the
25 ratio which the number of days spent in ports within the state
26 bears to the total number of days spent in ports within and with-
27 out the state. The term "days spent in ports" shall not include
28 periods when ships are tied up because of strikes or withheld
29 from the Alaska service for repairs, or because of seasonal

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1 reduction of service. Days in port shall be computed by dividing
2 the aggregate number of hours in all ports by 24. The value of
3 aircraft and automotive vehicles operating as freight and
4 passenger carriers from, to and within the state and compensation
5 of employees engaged in such operations, shall be apportioned to
6 the state in the ratio which the number of days during which such
7 services are rendered with the state bears to the total number
8 of days during which such services are rendered within and without
9 the state.

10 (21) Apportionment by Commissioner of Revenue.

11 If the allocation and apportionment provisions of this Subsection
12 do not fairly represent the extent of the taxpayer's business
13 activity in this state, the taxpayer may petition for or the
14 Commissioner of Revenue may require, in respect to all or any
15 part of the taxpayer's business activity, if reasonable:

16 (a) the exclusion of any one or more of the
17 factors;

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

21 (c) the employment of any other method to
22 effectuate an equitable allocation and apportionment of the
23 taxpayer's income.

24 The Commissioner of Revenue is specifically authorized to use
25 revenue miles traveled both within and without the state as a
26 factor in apportioning the income of carriers, if in the opinion
27 of the Commissioner of Revenue, the use of such factor would
28 better represent the extent of the carrier's business activity
29 in the state. The Commissioner of Revenue may promulgate proper

1 appportionment rules and regulations in conformity with this Sub-
2 section for general application in similar cases. In the case
3 of two or more organizations, trades or businesses owned or con-
4 trolled directly or indirectly by the same interest, the Commis-
5 sioner of Revenue is authorized to distribute, apportion, or
6 allocate the tax where such action is necessary to prevent evasion
7 of payment.

8 Sec. 2. Subsection D of Sec. 5, Ch. 115, SLA 1949 as repealed
9 and re-enacted by Ch. 132, SLA 1951 is hereby repealed.

10 Sec. 3. Subsection E of Section 5, Chapter 115, SLA 1949, as
11 repealed and re-enacted by Ch. 132, SLA 1951, is amended to read
12 as follows:

13 D. ~~[E.]~~ EXEMPTION. The tax levied hereunder shall not
14 apply to the pay of members of the armed forces of the United
15 States or auxiliary branches thereof.

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