

CS FOR HOUSE BILL NO. 12 (FINANCE)
IN THE LEGISLATURE OF THE STATE OF ALASKA
SEVENTEENTH LEGISLATURE - FIRST SESSION

BY THE HOUSE FINANCE COMMITTEE

Offered: 5/1/91
Referred: Rules

Sponsor(s): REPRESENTATIVES MOYER, Brown, Koponen, Ellis

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to the water's edge method of calculating income taxes for certain
2 corporations, and to the determination of net income subject to state income tax from the
3 operation of a ship or water transportation carrier for a foreign corporation; and
4 providing for an effective date."

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

6 * Section 1. PURPOSE. (a) By setting aside the exclusion from gross income of the income earned
7 by foreign corporations from vessel operations, it is the purpose of AS 43.20.030(h), added by sec. 3 of
8 this Act, to establish a uniform policy relating to the taxation of water transportation carriers, domestic
9 or foreign, subject to the apportionment of business income under AS 43.20.071.

10 (b) It is the purpose of the addition of AS 43.20.073, added by sec. 4 of this Act, to promote
11 investment and trade opportunities in the state.

12 * Sec. 2. LEGISLATIVE INTENT. The amendments to the Alaska Net Income Tax made by this
13 Act are not intended to reflect a determination or conclusion by the legislature as to the assertion that

1 the imposition of the worldwide combined reporting method directed for use by certain taxpayers by
2 AS 43.20 violates the foreign commerce clause of the United States Constitution.

3 * Sec. 3. AS 43.20.030 is amended by adding a new subsection to read:

4 (h) For purposes of determining the net income of a foreign corporation from the
5 operation of a ship or water transportation carrier, the provisions of 26 U.S.C. 883(a)(1) do not
6 apply. The taxpayer shall calculate gross income taking into consideration income derived from
7 the operation of a ship or water transportation carrier, and the provisions of AS 43.20.071 apply
8 to the determination of income subject to taxation by the operation of this subsection.

9 * Sec. 4. AS 43.20 is amended by adding a new section to read:

10 Sec. 43.20.073. AFFILIATED GROUPS. (a) A corporation that is a member of an
11 affiliated group shall file a return using the water's edge combined reporting method. A return
12 under this section must include the following corporations if the corporations are part of a unitary
13 business with the filing corporation:

14 (1) an affiliated corporation that is eligible to be included in a federal consolidated
15 return under 26 U.S.C. 1501 - 1505 (Internal Revenue Code) if the corporation's property,
16 payroll, and sales factors in the United States average

17 (A) 20 percent or more; or

18 (B) under 20 percent, if the corporation does not meet the requirements
19 of 26 U.S.C. 861(c);

20 (2) a domestic international sales corporation; in this paragraph, "domestic
21 international sales corporation" has the meaning given in 26 U.S.C. 992(a);

22 (3) a foreign sales corporation; in this paragraph, "foreign sales corporation" has
23 the meaning given to the term "FSC" in 26 U.S.C. 922(a);

24 (4) a corporation, regardless of the place where the corporation was incorporated,
25 if the corporation's property, payroll, and sales factors in the United States average 20 percent
26 or more;

27 (5) a corporation that is incorporated in or does business in a country that does
28 not impose an income tax, or that imposes an income tax at a rate lower than 90 percent of the
29 United States income tax rate on the income tax base of the corporation in the United States, if

30 (A) 50 percent or more of the sales, purchases, or payments of income or
31 expenses, exclusive of payments for intangible property, of the corporation are made

1 directly or indirectly to one or more members of a group of corporations filing under the
2 water's edge combined reporting method;

3 (B) the corporation does not conduct significant economic activity.

4 (b) When computing taxable income for a corporation under (a) of this section, the
5 following amounts shall be excluded:

6 (1) 80 percent of dividend income received from foreign corporations;

7 (2) an amount treated as a dividend under 26 U.S.C. 78;

8 (3) 80 percent of the royalties accrued or received from a foreign corporation.

9 (c) In (b)(1) and (3) of this section, a payment is considered to be received from a
10 corporation that is part of the unitary business if the payment is received

11 (1) by a member of an affiliated group included in a water's edge combined
12 report filed under this section; and

13 (2) from a corporation in which the recipient owns 50 percent or more of the
14 stock of the corporation.

15 (d) Dividends and royalties taxable to a corporation using the water's edge combined
16 reporting method are in lieu of an expense attribution for income excluded under (b) of this
17 section.

18 (e) The department may require a corporation that files under (a) of this section to file
19 a report under AS 43.20.065 - 43.20.071 prepared without regard to this section if the corporation
20 or an affiliated corporation

21 (1) fails to comply with regulations adopted under this chapter, including domestic
22 disclosure spread sheet filing requirements; or

23 (2) does not provide information that is requested by the department that is
24 necessary for the department to audit the taxpayer's corporate return in a reasonable period of
25 time.

26 (f) This section does not apply to taxpayers subject to AS 43.20.072 engaged in

27 (1) the production of oil or gas from a lease or property in the state; or

28 (2) the transportation of oil or gas by regulated pipeline in the state.

29 (g) In this section,

30 (1) "affiliated corporation" means a member of an affiliated group to which the
31 taxpayer filing a return under (a) of this section belongs;

1 (2) "affiliated group" means a group of two or more corporations in which 50
2 percent or more of the voting stock of each member of the group is directly or indirectly owned
3 by one or more corporate or noncorporate common owners, or by one or more of the members
4 of the group;

5 (3) "foreign corporation" means a corporation created or organized outside of the
6 United States, the District of Columbia, the Commonwealth of Puerto Rico, or a possession of
7 the United States;

8 (4) "water's edge combined reporting method" means a reporting method in which
9 the only corporations besides the taxpayer that may be included in the return are the corporations
10 listed in (a) of this section.

11 * Sec. 5. This Act applies to tax years beginning after December 31, 1991.

12 * Sec. 6. This Act takes effect immediately under AS 01.10.070(c).