

CHAPTER 132

AN ACT

[S. B. 66]

Pertaining to the Alaska Net Income Tax Act; repealing Section 5 of Chapter 115 Session Laws of Alaska 1949, and substituting in lieu thereof a new section; amending Section 7 and 12 of Chapter 115 Session Laws of Alaska 1949; providing for distraint on personal property; and declaring an emergency.

Be it enacted by the Legislature of the Territory of Alaska:

Section 1. Section 5 of Chapter 115, Session Laws of Alaska, 1949, is hereby repealed (except as to rights and liabilities accrued by virtue of the tax levied thereunder, which are preserved), and a new section in lieu thereof is hereby enacted to read as follows:

Section 5. TAX ON INDIVIDUALS, FIDUCIARIES, CORPORATIONS AND BANKS.

A. GENERAL RULE. There is hereby levied and there shall be collected and paid for each taxable year upon the net income of every individual, fiduciary, corporation and bank, required to make a return and pay a tax under the Federal income tax law, a tax equal to ten percent of the total income tax that would be payable for the same taxable year to the United States under the provisions of Chapter 1 (except subchapter D thereof) of the Internal Revenue Code upon all income derived from sources within the Territory, without benefit of the deduction of the tax payable hereunder to the Territory.

Rate of
tax levied.

B. INCOME FROM SOURCES WITHIN THE TERRITORY. Income from sources with-

Alaska
income
designated.

in the Territory shall include income from real or tangible personal property located in the Territory; income from a business, trade, or profession, and compensation from services rendered, within this Territory; and income from stocks, bonds, notes, bank deposits, and other intangible personal property having a business or taxable situs in the Territory; and rentals and royalties for the use of, or for the privilege of using in the Territory, patents, copyrights, secret processes and formulas, good will, trade-marks, trade brands, franchises, and other like property having a taxable or business situs in the Territory.

C. ALLOCATION AND APPORTIONMENT.

Direct
allocation.

(1) Direct Allocation. If a taxpayer's gross income is derived from sources both within and without the Territory, and the part within is so separate and distinct from and unconnected with the part without that the net income from the part within can be determined without regard to the part without, then the part without the Territory shall not be considered in computing the tax imposed by Section 5 A of this Act, and the special method of allocation, provided for in Section 5 C (2) of this Act, shall not be used.

Special
allocation
computation.

(2) Special Method of Allocation. If a taxpayer's gross income is derived from sources both within and without the Territory, and the part within is so connected with the part without that the net income from the part within cannot be accurately determined independently of the part without, such as in the

case of a business, trade or profession carried on within the Territory which is an integral part of a unitary business carried on both within and without the Territory, then the entire net income derived from sources both within and without the Territory shall be computed under the provisions of the Internal Revenue Code, and the net income derived from sources within the Territory shall be equal to that portion of such entire net income that (a) the total value of real and tangible personal property within the Territory, plus the total wages, salaries and bonuses and other compensation for personal services performed within the Territory bears to (b) the total value of real and tangible personal property both within and without the Territory, plus the total wages, salaries and bonuses and other compensation for personal services performed both within and without the Territory, viz:

Net income derived from sources within the Territory	=	Entire net income derived from sources both within and without the Territory	Formula.
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$$X [(a)^* \div (b) **]$$

*total value of real and tangible personal property within the Territory plus total wages, salaries and bonuses and other compensation for personal services performed within the Territory.

**total value of real and tangible personal property both within and without the Territory plus total wages, salaries, and bonuses and other compensation for personal services per-

formed both within and without the Territory.

Interstate
surface
and air
carrier
employees.

(3) Employees of Interstate Carriers. The tax levied hereunder shall apply to that portion of the voyage pay of vessel personnel of interstate carriers engaged in the Alaska trade which is earned in the waters of the Territory. The tax shall likewise apply to that portion of the pay earned in the Territory of the personnel of carriers operating vehicles or airplanes on land or in the air on routes to and from the Territory.

Apportionment
by Tax
Commissioner.

(4) Apportionment by Tax Commissioner. If the taxpayer, upon petition to the Tax Commissioner, as provided in Section 13 of this Act, conclusively demonstrates that because of other factors, the method of allocation hereinabove provided, results in a larger tax than in equity and good conscience he should have been required to pay, then the tax shall be determined, allocated and apportioned under such processes and formulas as the Tax Commissioner shall provide, and the Tax Commissioner may promulgate proper apportionment rules and regulations conformable with this Act for general application in similar cases. In the case of two or more organizations, trades or businesses owned or controlled directly or indirectly by the same interest, the Tax Commissioner is authorized to distribute, apportion, or allocate the tax where such action is necessary to prevent evasion of payment.

D. DETERMINATION OF PROPERTY AND PAYROLL FACTORS FOR FREIGHT AND PASSENGER CARRIERS. The value of

vessels operating on the high seas and compensation of employees engaged in operating such vessels shall be apportioned to the Territory in the ratio which the number of days spent in ports within the Territory bears to the total number of days spent in ports within and without the Territory. The term "days spent in ports" shall not include periods when ships are tied up because of strikes or withheld from the Alaska service for repairs, or because of seasonal reduction of service. Days in port shall be computed by dividing the aggregate number of hours in all ports by 24. The value of aircraft and automotive vehicles operating as freight and passenger carriers from, to and within the Territory and compensation of employees engaged in such operations, shall be apportioned to the Territory in the ratio which the number of days during which such services are rendered within the Territory bears to the total number of days during which such services are rendered within and without the Territory.

Payroll
and property
value
determination.

E. EXEMPTION. The tax levied hereunder shall not apply to the pay of members of the armed forces of the United States or auxiliary branches thereof.

Military
exemption.

Section 2. Section 7 of Chapter 115, Session Laws of Alaska 1949, is hereby amended to read as follows:

Section 7. RETURNS AND PAYMENT OF TAX.

A. TAX RETURNS. Every individual, fiduciary, partnership, corporation and bank required to make a return under the provisions

Tax returns
and contents.

of the Internal Revenue Code, shall at the same time render to the Tax Commissioner a return setting forth: (1) the amount of tax and the balance of tax due or overpayment of tax as reported on returns made to the Collector of Internal Revenue; (2) the amount of tax due under this Act, less credits claimed against tax; (3) such other information for the purpose of carrying out the provisions of this Act as may be prescribed by the Tax Commissioner. The return shall either be on oath or contain a written declaration that it is made under the penalty of perjury, and the Tax Commissioner shall prescribe forms accordingly. The provisions of Sections 51, 52, 53, 58, 59, and 60 of the Internal Revenue Code shall be adopted insofar as such provisions are consistent with other provisions of this Act.

Time for
payment.

B. PAYMENT OF TAX. The total amount of tax imposed by this Act shall be due and payable to the Tax Commissioner at the same time and in the same manner as the tax payable to the United States Collector of Internal Revenue under the provisions of Sections 56 and 59 of the Internal Revenue Code.

Furnishing
copy of
federal
return.

C. FEDERAL INCOME TAX RETURN. Any taxpayer, upon request by the Tax Commissioner, must furnish to the Tax Commissioner a true and correct copy of any tax return which he has filed with the United States Collector of Internal Revenue. Every taxpayer must notify the Tax Commissioner in writing of any alteration in, or modification of, his Federal income tax return and of any recomputation of tax or determination of deficiency (whether with or without assessment). A full

statement of the facts shall accompany this notice, which must be filed within twenty days after such modification, recomputation or determination of deficiency, and the taxpayer must pay the additional tax or penalty hereunder.

D. OVERPAYMENT, CREDIT AND REFUND. The Tax Commissioner is authorized to credit or refund all overpayments of taxes, all taxes erroneously or illegally assessed or collected, all penalties collected without authority, and all taxes that are found unjustly assessed or excessive in amount, or in any manner wrongfully collected. The Tax Commissioner shall by means of rules and regulations specify the manner in which claims for credits or refunds shall be made, prescribe limitations and give notice of allowance or disallowance. These rules and regulations shall be based upon the provisions of Secs. 321 and 322 of the Internal Revenue Code insofar as such provisions are consistent with other provisions of this Act. When refund is allowed to a taxpayer, same shall be paid out of the general fund on a Territorial warrant issued pursuant to a voucher approved by the Tax Commissioner.

Overpayment
and refunds.

E. DECLARATION AND PAYMENT OF ESTIMATED TAX BY FEDERAL EMPLOYEES. Federal government employees whose wages are not subject to the withholding provisions of this Act must file a declaration of estimated tax for the taxable year on or before April 15th of such year and pay at that time one-fourth of such estimated tax. The second payment shall be due on July 15th, the third payment on October 15th, and the fourth pay-

Payment
by Federal
employees.

ment on January 15th. Each payment shall be based on ten percent of the Federal income tax withheld for the three months immediately preceding such payment.

In addition to filing the declaration of estimated tax such employees must also file yearly returns. For failure to file a declaration of or pay such estimated tax there shall be assessed five percent of the unpaid amount of each installment due plus one percent for each month or part of a month, except the first, during which time such amount remains unpaid up to a maximum of ten percent of the unpaid amount of such installments.

Penalty for failure to file declaration.

Section 3. Section 12 of Chapter 115, Session Laws of Alaska, 1949 is hereby amended to read as follows:

Section 12. ENFORCEMENT.

A. ACTION TO COLLECT. Any tax due and unpaid under this Act, any interest, penalty, additional amount, or addition to such tax, and any tax (or any interest, penalty, additional amount, or addition to such tax) which has been erroneously refunded shall constitute a debt to the Territory of Alaska and may be collected by lien foreclosure or sued for and recovered in any proper form of action, in the name of the Territory of Alaska, in the district court for Alaska. The remedy herein shall be in addition to any and all other existing remedies.

Action by Territory to collect.

B. LIEN.

(1) PROPERTY SUBJECT TO LIEN. If any person liable to pay any tax neglects or re-

Lien.

fuses to pay the same after demand, the amount (including any interest, penalty, additional amount, or addition to such tax, together with any costs that may accrue in addition thereto) shall be a lien in favor of the Territory upon all property, and rights to property, whether real or personal, belonging to such person.

(2) PERIOD OF LIEN. The lien shall arise at time of delinquency and shall continue until the liability for such amount is satisfied or the lien is foreclosed.

Time limit.

(3) VALIDITY AGAINST CERTAIN PERSONS. Such lien shall not be valid as against any mortgagee or other lien holder, pledgee, purchaser or judgment creditor until notice thereof has been filed in the office of the Recorder of the Commissioner's and Recorder's Precinct in the Territory, within which the property subject to such lien is situated.

Filing of
lien necessary.

(a) When a notice of such lien is filed, the Recorder shall forthwith enter the same in an alphabetical Territorial Tax Lien Index, showing on one line the name and residence of the taxpayer named in such notice, the Tax Commissioner's serial number of such notice, the date and hour of filing, and the amount of tax, including interest, penalty, additional amount, or addition to such tax, and costs. He shall file and keep all original notices so filed in numerical order in a file or files, designated Territorial Tax Lien Notices.

Territorial
tax lien
index.

(b) When a certificate of discharge of any tax lien issued by the Tax Commissioner or any of his authorized deputies or agents, is filed

Notice of
lien
discharge.

in the office of the Recorder, where the original notice of lien is filed, said Recorder shall enter the same with date of filing in said Territorial Tax Lien Index on the line where notice of the lien so discharged is entered, and permanently attach the original certificate of discharge to the original notice of lien.

Files
furnished by
Territory.

(c) Said Territorial Tax Lien Index and file or files for said Territorial Tax Lien Notices shall be furnished to the Recorder in this Territory in the manner now provided by law for the furnishing of books in which deeds are recorded.

Attorney
General
may sue
to enforce
lien.

(4) ACTION TO ENFORCE LIEN. In any case where there has been a refusal or neglect to pay any tax (including any interest, penalty, additional amount or addition to such tax, together with any costs that may accrue in addition thereto), the Attorney General of the Territory, at the request of the Tax Commissioner, may file an action in the district court for Alaska to enforce the lien of the Territory for such tax upon any property and rights to property, whether real or personal, or to subject any such property and rights to property owned by the delinquent, or in which he has any right, title or interest, to the payment of such tax. Such action shall be commenced and pursued in like manner as is now provided by law for the foreclosure of Liens in Sections 56-1-31 to 56-1-38 ACLA 1949, which are hereby made applicable to tax liens arising under this Act to the extent that such provisions are not inconsistent with other provisions of this Act. Such action may be commenced at any time within six years following the date such lien arises.

(C) **SUSPENSION OF LICENSES.** In addition to the other penalties imposed herein, any person authorized to conduct any business by virtue of a license duly issued to him under the laws of Alaska, whether he be a resident or not, shall, if he fails to pay the tax levied under Subsection (A), Section 5 of this Act, suffer suspension of his said license or licenses until the tax imposed by this Act, together with penalties, is paid in full.

(D) **DISTRAINT ON PERSONAL PROPERTY.** It shall be lawful for the Tax Commissioner, or any of his agents or deputies, to collect any taxes (the word "taxes," as used in this section, including any deficiencies in respect of such taxes) with such interest, penalties, and other additional amounts as are permitted by law, by distraint and sale, in the manner provided herein, of the property of any person, liable to pay any taxes, interest, penalties, or other additional amounts, who neglects or refuses to pay the same within sixty days from the mailing of notice and demand for payment thereof, and who has not appealed from the assessment of such taxes, interest, penalties and other additional amounts pursuant to the provisions of Section 13 of this Act. The term "property" as used herein shall be construed to mean personal property, both tangible and intangible, any right, title, and interest to such personal property, and shall include, without limitation, stocks, securities, bank accounts, and evidences of debt.

Collection
by distraint
and sale.

(1) **PROPERTY EXEMPT FROM DISTRAINT.** Notwithstanding the provisions of Sections 55-9-78 and 55-9-79, ACLA 1949, or

Exemption
of certain
property
from distraint.

any other provision of law exempting property from execution, there shall be exempt from distraint and sale under this Act, if belonging to the head of a family, the following property only:

(a) The school books and wearing apparel necessary for such family;

(b) Arms for personal use;

(c) One cow, 2 hogs, 5 sheep and the wool thereof, provided the aggregate market value of said sheep shall not exceed \$50.00.

(d) The necessary food for such cow, hogs, and sheep, for a period not exceeding thirty days;

(e) Fuel to an amount not greater in value than \$25.00;

(f) Provisions to an amount not greater than \$50.00;

(g) Household furniture kept for use to an amount not greater than \$300.00; and

(h) The books, tools, or implements, of a trade or profession, to an amount not greater than \$100.00.

Levy.

(2) LEVY. In case of neglect or refusal to pay taxes or deficiencies as hereinabove provided, the Tax Commissioner may levy, or, by warrant issued under his own hand, authorize a deputy or agent to levy upon, seize and sell all property, except such as is exempt by the preceding section, belonging to such person, for the payment of the amount due, with interest and penalty for nonpayment, and also of such further amount as shall be sufficient

for the fees, costs, and expenses of such levy.

(3) PROCEEDINGS ON DISTRAINT.

When distraint is made, as provided in Section 12 D of this Act—

Distraint
proceedings.

(a) The deputy or agent charged with the collection shall make or cause to be made an account of the property distrained, a copy of which, signed by such deputy or agent making such distraint, shall be left with the owner or possessor of such property, or at his dwelling or usual place of business, with some person of suitable age and discretion, if any such can be found, or if the taxpayer is a corporation, with any officer, manager, general agent, or agent for process, with a note of the amount demanded and the time and place of sale; and

Account of
distrained
property.

(b) Forthwith cause a notice of the time and place of sale, together with a description of the property distrained, in a newspaper within the judicial division wherein such distraint is made, or in lieu thereof and in the discretion of the Tax Commissioner, cause such notice to be publicly posted in three public places within five miles of the place where the sale is to be held, one of which notices to be posted at the post office nearest to the place where the sale is to be made.

Publication.

(c) The time of sale shall not be less than ten nor more than sixty days from the date of such notification to the owner or possessor of the property, and the place proposed for the sale shall not be more than five miles distant from the place of making such distraint. Such sale may be adjourned from

Time of
sale.

time to time by the said deputy or agent, if he deems it advisable, but not for a time to exceed in all ninety days.

Territory may purchase property.

(4) PROPERTY FOR ACCOUNT OF TERRITORY. When any property is advertised for sale under distraint as aforesaid, the deputy or agent making the seizure shall proceed to sell such property at public auction, offering the same at not less than a fair minimum price, including the expenses of making the seizure and of advertising the sale, and if the amount bid for such property at the sale is not equal to the fair minimum price so fixed, the agent or deputy conducting the sale may declare such property to be purchased by him for the Territory. The property so purchased may be sold by the deputy or agent under such regulations as may be prescribed by the Tax Commissioner.

Redemption of property.

(5) REDEMPTION OF PROPERTY. In any case of distraint for the payment of taxes or deficiencies, the property so distrainted shall be restored to the owner or possessor, if, prior to the sale, payment of the amount due is made to the proper deputy or agent charged with the collection, together with the fees and other charges; but in case of nonpayment, the said deputy or agent shall proceed to sell the said property at public auction.

Certificate of sale.

(6) CERTIFICATE OF SALE. In all cases of sale, as aforesaid, the certificate of sale—

Authority to make sale.

(a) Shall be prima facie evidence of the right of the deputy or agent to make such sale,

and conclusive evidence of the regularity of his proceedings in making the sale; and

(b) Shall transfer to the purchaser all right, title, and interest of such delinquent in and to the property sold; and

Title to purchaser.

(c) Where such property consists of stocks, shall be notice, when received, to any corporation, company, or association of said transfer, and shall be authority to such corporation, company, or association to record the transfer on their books and records in the same manner as if the stocks were transferred or assigned by the party holding the same, in lieu of any original or prior certificates, which shall be void, whether canceled or not; and

Transfer of stocks.

(d) Where the subject of sale is securities or other evidences of debt, shall be a good and valid receipt to the person holding the same, as against any person holding, or claiming to hold, possession of such securities or other evidences of debt.

Sale of securities.

(7) SALE OF INDIVISIBLE PROPERTY.

When any property liable to distraint for taxes is not divisible, so as to enable the collector by sale of a part thereof to raise the whole amount of the tax or deficiency, with all costs and charges, the whole of such property shall be sold, and the surplus of the proceeds of the sale, after making allowance for the amount of the tax or deficiency, interest, penalties, and additions thereto, and for the costs and charges of the distraint and sale, shall be surrendered to the owner of such property.

Authority to sell indivisible property.

Successive seizures until claim satisfied.

(8) SUCCESSIVE SEIZURES. Whenever any property which is seized and sold by virtue of the foregoing provisions is not sufficient to satisfy the claim of the Territory for which distraint or seizure is made, the deputy or agent may, thereafter, and as often as the same may be necessary, proceed to seize and sell in like manner, any other property liable to seizure of the taxpayer against whom such claim exists, until the amount due from such taxpayer, together with all expenses, is fully paid.

Surrender
of property.

(9) SURRENDER OF PROPERTY SUBJECT TO DISTRAINT. Any person in possession of property, or rights to property, subject to distraint, upon which a levy has been made, shall, upon demand by the deputy or agent making such levy, surrender such property or rights to such deputy or agent, unless such property or right is, at the time of such demand, subject to an attachment under any judicial process. Any person who fails or refuses to so surrender any of such property or rights shall be liable in his own person and estate to the Territory in a sum equal to the value of the property or rights not so surrendered, but not exceeding the amount of the taxes or deficiencies (including penalties, and interest) for the collection of which such levy has been made, together with costs and interest from the date of such levy. The term "person" as used in this subsection includes an officer or employee of a corporation or a member or employee of a partnership, who as such officer, employee, or member is under a duty to perform the act in respect of which the violation occurs.

Failure to
surrender.

(10) PRODUCTION OF BOOKS. All persons, and officers of companies or corporations, are required, on demand of an agent or deputy about to distrain or having distrained on any property, or rights of property, to exhibit all books containing evidence or statements relating to the subject of distraint, or the property or rights of property liable to distraint for the tax due.

Production and examination of books.

(11) FEES AND CHARGES. The Tax Commissioner shall by regulation determine the fees and charges to be allowed in all cases of distraint, and shall have power to determine whether any expense incurred in making any distraint or seizure was necessary.

Tax Commissioner to set fees.

(12) PERIOD OF LIMITATION UPON DISTRAINT. The period of limitation upon distraint shall be the same as provided under Sections 276(c) and 277 of the Internal Revenue Code. In determining the running of any period of limitation in respect of distraint, the distraint shall be held to have begun on the date on which the levy upon property is made.

Time limit upon distraint.

(13) COLLECTION BY DISTRAINT NOT EXCLUSIVE. The provisions of this Act shall not be deemed exclusive but shall be in addition to any and all other existing remedies provided by law for the enforcement of the revenue laws of the Territory.

Distraint is additional remedy.

(14) ACTIONS VERSUS TERRITORY. The Tax Commissioner may be made a party defendant in an action at law or a suit in equity by any person aggrieved by the unlawful seizure or sale of his property, but only

Liability of Territory.

the Territory shall be responsible for any final money judgment secured against the Tax Commissioner, and said judgment shall be paid or satisfied out of the general fund of the Territorial Treasury.

(15) RULES AND REGULATIONS. The Tax Commissioner shall prescribe and publish all needful rules and regulations for the enforcement of this section.

Rules and regulations.

Section 4. TAXABLE YEARS TO WHICH APPLICABLE. The provisions of this act shall apply (1) to the taxable years beginning January 1, 1951, and shall be applicable to the entire current year, including that part which has elapsed prior to the effective date of this act; and (2) to all ensuing taxable years.

Application to taxable year.

Section 5. EMERGENCY CLAUSE. An emergency is hereby declared to exist and this act shall take effect immediately upon its passage and approval.

Emergency clause.

Approved March 27, 1951.

CHAPTER 133

AN ACT

[H. B. 141]

Relating to the organization of the Territorial government of Alaska, specifically providing for the reorganization of the agencies responsible for financial administration; repealing and re-enacting Sections 10-2-1, 10-2-2, 15-1-2, 15-1-3, 15-1-4, 7-1-6(b), 12-4-1, 4-3-13, 8-1-1, 12-4-2, 8-1-15, 8-1-16, 8-1-17, 12-3-3, 13-1-2, 15-1-1, and 43-3-36; repealing Sections 7-1-2, 7-1-3, 7-1-4, 7-1-5, 8-1-2,