

Sec. 11. This Act shall become effective upon its passage and approval or upon its becoming law without such approval.

Approved May 5, 1959

## CHAPTER 175

### AN ACT

**Relating to the Alaska Net Income Tax Act and providing for allocation and apportionment of taxpayer's gross income; repealing and re-enacting Subsection C of Sec. 5, Ch. 115, SLA 1949, as repealed and re-enacted by Ch. 132, SLA 1951, as amended by Ch. 64, SLA 1957; repealing Subsection D of Sec. 5, Ch. 115, SLA 1949 as repealed and re-enacted by Ch. 132, SLA 1951; amending Subsection E of Sec. 5, Ch. 115, SLA 1949, as repealed and re-enacted by Ch. 132, SLA 1951; and providing for an effective date.**

(C.S.H.B.198)

**Be it enacted by the Legislature of the State of Alaska:**

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 Subsection C of Sec. 5, Ch. 115, SLA 1949, as repealed and re-enacted by Ch. 132, SLA 1951, and as amended by Ch. 64, SLA 1957, is hereby repealed and re-enacted to read as follows:

**C. Allocation and Apportionment**

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

(a) "Business income" means income arising from transactions and activity in the regular course of the taxpayer's trade or business and includes income from tangible and intangible property if the acquisition, management, and disposition of the property constitute integral parts of the taxpayer's regular trade or business operations.

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

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

(d) "Financial organization" means any bank, trust company, savings bank, (industrial bank, land bank, safe deposit company), private banker, savings and loan association, credit union, (cooperative bank), investment company, or any type of insurance

company.

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

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

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

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

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

(4) Direct allocation. If a taxpayer's gross income is derived from sources both within and without the state 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 state shall not be considered in computing the income tax and Subsection C (11) through (19) herein shall not be applicable.

(5) 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 state. The tax shall likewise apply to that portion of the pay earned in the state of the personnel of carriers operating vehicles or airplanes on land or in the air on routes to and from the state. In determining portion of the voyage pay of vessel personnel earned in the waters of Alaska, the method of allocation provided for in Subsection C (20) herein shall be used.

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

(7) Net rents and royalties.

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

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

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

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

(c) The extent of utilization of tangible personal property in a state is determined by multiplying the rents and royalties by a fraction, the numerator of which is the number of days of physical location of the property in

the state during the rental or royalty period in the taxable year and the denominator of which is the number of days of physical location of the property everywhere during all rental or royalty periods in the taxable year. If the physical location of the property during the rental or royalty period is unknown or unascertainable by the taxpayer, tangible personal property is utilized in the state in which the property was located at the time the rental or royalty payer obtained possession.

(8) Capital gains and losses.

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

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

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

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

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

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

(10) Patent and copyright royalties.

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

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

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

(b) A patent is utilized in a state to the extent that it is employed

in production, fabrication, manufacturing, or other processing in the state or to the extent that a patented product is produced in the state. If the basis of receipts from patent royalties does not permit allocation to states or if the accounting procedures do not reflect states of utilization, the patent is utilized in the state in which the taxpayer's commercial domicile is located.

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

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

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

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

(14) Average value of property.

The average value of property shall be determined by averaging the values at the beginning and ending of the tax period but the Commissioner of Revenue may require the averaging of monthly values during the tax period if reason-

ably required to reflect properly the average value of the taxpayer's property.

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

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

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

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

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

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

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

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

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

(19) Situs of sales of other than

tangible personal property. Sales, other than sales of tangible personal property, are in this state if:

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

(20) 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 state in the ratio which the number of days spent in ports within the state bears to the total number of days spent in ports within and without the state. 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 state and compensation of employees engaged in such operations, shall be apportioned to the state in the ratio which the number of days during which such services are rendered with the state bears to the total number of days during which such services are rendered within and without the state.

(21) Apportionment by Commissioner of Revenue. If the allocation and apportionment provisions of this Subsection do not fairly represent the extent of the taxpayer's business activity in this state, the taxpayer may petition for or the Commissioner of Revenue may require, in respect to all or any part of the

taxpayer's business activity, if reasonable:

- (a) the exclusion of any one or more of the factors;
- (b) the inclusion of one or more additional factors which will fairly represent the taxpayer's business activity in this state; or
- (c) the employment of any other method to effectuate an equitable allocation and apportionment of the taxpayer's income.

The Commissioner of Revenue is specifically authorized to use revenue miles traveled both within and without the state as a factor in apportioning the income of carriers, if in the opinion of the Commissioner of Revenue, the use of such factor would better represent the extent of the carrier's business activity in the state. The Commissioner of Revenue may promulgate proper apportionment rules and regulations in conformity with this Subsection 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 Commissioner of Revenue is authorized to distribute, apportion, or allocate the tax where such action is necessary to prevent evasion of payment.

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

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

**D. 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.

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

Approved May 4, 1959

## CHAPTER 176

### AN ACT

**Authorizing the Governor of Alaska to accept federal grants and transfers of prop-**