



LAWS OF ALASKA

1991

Source

CSHB 12(RLS)(efd del)

Chapter No.

11

AN ACT

Relating to the water's edge method of calculating income taxes for certain corporations.

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

THE ACT FOLLOWS ON PAGE 1

Approved by the Governor: May 30, 1991
Actual Effective Date: August 28, 1991

AN ACT

1 Relating to the water's edge method of calculating income taxes for certain corporations.
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5 * Section 1. PURPOSE. It is the purpose of the addition of AS 43.20.073, added by sec. 3 of this
6 Act, to promote investment and trade opportunities in the state.

7 * Sec. 2. LEGISLATIVE INTENT. The amendments to the Alaska Net Income Tax made by this
8 Act are not intended to reflect a determination or conclusion by the legislature as to the assertion that
9 the imposition of the worldwide combined reporting method directed for use by certain taxpayers by
10 AS 43.20 violates the foreign commerce clause of the United States Constitution.

11 * Sec. 3. AS 43.20 is amended by adding a new section to read:

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

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

19 (A) 20 percent or more; or

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

Chapter 11

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

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

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

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

11 (A) 50 percent or more of the sales, purchases, or payments of income or
12 expenses, exclusive of payments for intangible property, of the corporation are made
13 directly or indirectly to one or more members of a group of corporations filing under the
14 water's edge combined reporting method;

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

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

18 (1) 80 percent of dividend income received from foreign corporations;

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

20 (3) 80 percent of the royalties accrued or received from a foreign corporation.

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

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

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

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

30 (e) The department may require a corporation that files under (a) of this section to file

1 a report under AS 43.20.065 - 43.20.071 prepared without regard to this section if the corporation
2 or an affiliated corporation

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

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

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

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

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

11 (g) In this section,

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

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

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

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

24 * Sec. 4. This Act applies to tax years beginning after December 31, 1991.