

SENATE BILL NO. 154

IN THE LEGISLATURE OF THE STATE OF ALASKA
 THIRTY-SECOND LEGISLATURE - SECOND SESSION

BY SENATOR KIEHL

Introduced: 1/7/22
 Referred: Prefiled

A BILL**FOR AN ACT ENTITLED**

1 **"An Act relating to the taxation of income of individuals, partners, shareholders in S**
 2 **corporations, trusts, and estates; relating to a credit against the individual income tax;**
 3 **repealing tax credits applied against the tax on individuals under the Alaska Net Income**
 4 **Tax Act; and providing for an effective date."**

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

6 * **Section 1.** AS 43.05.045(a) is amended to read:

7 (a) **Except as provided in AS 43.22.075(h), or unless** [UNLESS] an
 8 exemption is granted under (b) of this section, a taxpayer required to submit a return
 9 or report for a tax levied under this title or for any other tax administered by the
 10 department shall submit the return or report electronically in a format prescribed by
 11 the department. Failure to comply with this section may result in a civil penalty under
 12 AS 43.05.220(f). If a law under this title requires a report or return or a portion of a
 13 report or return to be in writing, an electronically filed report or return satisfies this
 14 section. A taxpayer shall submit attachments to a report or return required under this

1 title electronically.

2 * **Sec. 2.** AS 43 is amended by adding a new chapter to read:

3 **Chapter 22. Income Tax.**

4 **Sec. 43.22.010. Income tax on individuals.** (a) Each calendar year or fraction
5 of a calendar year, an income tax is imposed on the income of a

6 (1) resident individual, trust, or estate;

7 (2) nonresident individual, trust, or estate that is derived from or
8 connected with a source in the state.

9 (b) The tax under this section for an individual or individuals filing jointly is

10 (1) 2.75 percent of taxable income for calendar year 2023;

11 (2) three percent of taxable income for calendar year 2024;

12 (3) 3.25 percent of taxable income for calendar year 2025;

13 (4) 3.75 percent of taxable income for calendar years after 2025.

14 (c) Two resident individuals who file a joint federal income tax return may
15 determine the tax imposed by this chapter jointly under this section.

16 (d) Two individuals who file a joint federal income tax return both or one of
17 whom is not a resident may elect to determine the tax imposed by this chapter either

18 (1) individually; or

19 (2) jointly as if both individuals were residents; the income of the
20 individuals filing jointly under this paragraph is not subject to the calculation under
21 AS 43.22.015.

22 **Sec. 43.22.015. Calculation of tax on a nonresident individual.** (a) Except as
23 otherwise provided in (b) of this section, the tax on a nonresident individual is the
24 product of

25 (1) the tax determined under AS 43.22.010(b) on the nonresident
26 individual's taxable income computed as if the nonresident individual were a resident
27 individual; and

28 (2) a fraction, the

29 (A) numerator of which is the nonresident individual's income
30 taxable under AS 43.22.045; and

31 (B) denominator of which is the nonresident individual's

1 taxable income computed as if the nonresident individual were a resident
2 individual.

3 (b) If a nonresident individual's taxable income computed under (a)(2)(B) of
4 this section is less than the nonresident individual's income taxable under (a)(2)(A) of
5 this section, the tax imposed by this chapter is on the nonresident individual's taxable
6 income as computed under AS 43.22.045.

7 **Sec. 43.22.020. Tax on trusts and estates.** (a) A tax is imposed for each
8 taxable year or portion of a taxable year on the taxable income of a resident or
9 nonresident trust or estate. The tax under this section for a trust or estate is

- 10 (1) 2.75 percent of taxable income for calendar year 2023;
- 11 (2) three percent of taxable income for calendar year 2024;
- 12 (3) 3.25 percent of taxable income for calendar year 2025;
- 13 (4) 3.75 percent of taxable income for calendar years after 2025.

14 (b) In this section, the taxable income of a nonresident trust or estate is the
15 income of the trust or estate that is derived from or connected with a source in the
16 state.

17 (c) A trust is not subject to tax under this chapter if

- 18 (1) all of the trustees of the trust are nonresidents;
- 19 (2) the entire corpus of the trust, including real, tangible, and
20 intangible property, is located outside the state; and
- 21 (3) no income or gains of the trust are derived from or connected with
22 a source in the state.

23 (d) For purposes of (c)(1) of this section, a trustee that is a nonresident
24 banking corporation at the time the banking corporation becomes a trustee is a
25 nonresident trustee even if the banking corporation later becomes a resident trustee
26 because it is acquired by or becomes an office or branch of a resident trustee.

27 (e) A trust that is exempt from federal income tax because of its purpose or
28 activities is not subject to tax under this chapter.

29 (f) A special needs trust or other trust established to provide solely for the
30 housing, living expenses, or medical care of a disabled beneficiary is not subject to tax
31 under this chapter. In this subsection,

1 (1) "disabled beneficiary" means an individual who has

2 (A) a physical or mental impairment that substantially limits
3 one or more major life activities; or

4 (B) a condition that may require the use of a prosthesis, special
5 equipment for mobility, or a service animal;

6 (2) "special needs trust" has the meaning given in AS 13.36.215(b).

7 **Sec. 43.22.025. Credit for income taxes imposed by other jurisdictions. (a)**

8 A resident individual, trust, or estate or part-year resident individual, trust, or estate is
9 allowed a credit against the tax due under this chapter for an income tax that was
10 imposed on the resident or part-year resident for the taxable year by another state or
11 the political subdivision of another state on income derived from or connected with
12 that state or political subdivision.

13 (b) A credit allowed under (a) of this section

14 (1) for a resident individual, trust, or estate may not exceed the
15 individual's, trust's, or estate's tax due under this chapter before credits are applied,
16 multiplied by a fraction, the numerator of which is the portion of the individual's,
17 trust's, or estate's taxable income that is derived from or connected with a source in
18 another state or the political subdivision of another state and the denominator of which
19 is the resident individual's, trust's, or estate's taxable income;

20 (2) for a part-year resident individual, trust, or estate may not exceed
21 the individual's, trust's, or estate's tax due for the period of state residency before
22 credits are applied, multiplied by a fraction, the numerator of which is the individual's,
23 trust's, or estate's taxable income derived from or connected with a source in another
24 state or the political subdivision of another state during the period of state residency
25 and the denominator of which is the part-year resident individual's, trust's, or estate's
26 taxable income during the period of state residency;

27 (3) may not reduce the tax due under this chapter to less than the tax
28 that would have been due if the income derived from or connected with a source in
29 another state or the political subdivision of another state and subject to taxation by the
30 other state or political subdivision had been excluded from the resident or part-year
31 resident individual's, trust's, or estate's taxable income during the calculation of tax

1 under this chapter before the application of credits.

2 (c) If the tax administration of another state or a political subdivision of
3 another state determines that a taxpayer has overpaid tax, affecting the computation of
4 the credit allowed under this section for any taxable year, the taxpayer shall file an
5 amended return with the department not later than 90 days after the final determination
6 by the state or political subdivision that the tax was overpaid. The department may
7 assess a taxpayer additional tax, proportional to the amount overpaid in the other state
8 or political subdivision.

9 (d) A taxpayer is not allowed a credit under this section for taxes paid to
10 another jurisdiction if the taxpayer claims a credit against the income tax imposed by
11 the other jurisdiction for the tax payable under this chapter.

12 (e) Income tax imposed on a partner or the shareholder of an S corporation on
13 the income of the partnership or S corporation, including tax paid by the partnership or
14 S corporation to satisfy the tax liability of the partner or shareholder, may be included
15 in the calculation of a credit under this section. Tax imposed on the partnership or S
16 corporation that is the direct liability of the partnership or S corporation and not that of
17 the partner or shareholder may not be included in the calculation of a credit under this
18 section.

19 **Sec. 43.22.030. Taxable income; general rule.** (a) In this chapter, taxable
20 income is the taxpayer's federal adjusted gross income for the taxable year

21 (1) plus, if not already included in federal adjusted gross income,

22 (A) interest on obligations of another state, a political
23 subdivision of another state, the public instrumentality of another state, or the
24 local authority of another state;

25 (B) a loss on the sale or exchange of an obligation issued by or
26 on behalf of

27 (i) the state;

28 (ii) a municipality of the state; or

29 (iii) a public instrumentality, public authority, or public
30 corporation created under state law;

31 (C) a loss from the sale or exchange of shares in a unit

1 investment trust if the loss is attributable to an obligation issued by or on
2 behalf of

3 (i) the state;

4 (ii) a municipality of the state; or

5 (iii) a public instrumentality, public authority, or public
6 corporation created under state law;

7 (D) interest or dividends on obligations or securities issued by
8 the United States, or an authority, commission, or instrumentality of the United
9 States, that the Internal Revenue Code exempts from federal income tax;

10 (E) income taxes under this chapter;

11 (F) a gain realized but not recognized under 26 U.S.C. 1031
12 (Internal Revenue Code);

13 (G) a deduction allowed in the determination of federal
14 adjusted gross income that is directly or indirectly related to income that is not
15 taxable under this chapter; and

16 (H) income of an incomplete gift nongrantor trust to which a
17 taxpayer transferred property, less deductions of the trust, if

18 (i) the income and deductions of the trust would be
19 taken into account in computing the taxpayer's federal taxable income
20 if the trust in its entirety was treated as a grantor trust under the Internal
21 Revenue Code;

22 (ii) the trust is a resident trust;

23 (iii) the trust does not qualify as a grantor trust under 26
24 U.S.C. 671 - 679 (Internal Revenue Code); and

25 (iv) the grantor's transfer of assets to the trust is treated
26 as an incomplete gift under 26 U.S.C. 2511 (Internal Revenue Code);

27 (2) minus, if included in federal adjusted gross income,

28 (A) interest income or a dividend from an obligation that is
29 exempt from taxation by a state under federal law;

30 (B) a refund or credit for the overpayment of an income tax;

31 (C) an ordinary and necessary expense, including an interest

1 expense, paid or incurred during the taxable year, that is directly or indirectly
 2 related to income exempt under the Internal Revenue Code but taxable by the
 3 state;

4 (D) a gain recognized under 26 U.S.C. 1031 (Internal Revenue
 5 Code) that was included in federal adjusted gross income under (1) of this
 6 subsection;

7 (E) income exempt under 4 U.S.C. 114;

8 (F) compensation prohibited from state taxation by 50 U.S.C.
 9 3901 - 4043 (Servicemembers Civil Relief Act);

10 (G) a gain from the sale or exchange of an obligation issued by
 11 or on behalf of

12 (i) the state;

13 (ii) a municipality of the state; or

14 (iii) a public instrumentality, public authority, or public
 15 corporation created under state law.

16 (b) When calculating taxable income, a taxpayer

17 (1) may not carry back a net operating loss under 26 U.S.C.
 18 172(b)(1)(A)(i) (Internal Revenue Code);

19 (2) may carry over a net operating loss under 26 U.S.C.
 20 172(b)(1)(A)(ii) (Internal Revenue Code), except that a loss may not be carried over
 21 for more than five years; for a taxpayer subject to AS 43.19 (Multistate Tax Compact),
 22 the amount of a net operating loss allowed to be carried over is limited to the amount
 23 apportioned to the state in the taxable year in which the loss was generated under
 24 AS 43.19 (Multistate Tax Compact);

25 (3) shall include the modifications required by AS 43.20.144(b)(2),
 26 concerning intangible drilling and development costs, AS 43.20.144(b)(3), concerning
 27 percentage depletion, and AS 43.20.144(b)(4), concerning depreciation.

28 **Sec. 43.22.035. Taxable income from partnerships and S corporations.** (a)

29 A partner or shareholder shall make an adjustment described in AS 43.22.030 to
 30 income or a gain, loss, or deduction from a partnership or S corporation in proportion
 31 to a partner's distributive share of a partnership or a shareholder's pro rata share of an

1 S corporation. If a partner's distributive share or a shareholder's pro rata share of an
2 adjustment is not required to be accounted for separately for federal income tax
3 purposes, the partner's or shareholder's share of the adjustment must be determined in
4 proportion to the partner's or shareholder's share of partnership or S corporation
5 income or losses for federal income tax purposes.

6 (b) In determining taxable income, a partner or shareholder shall treat income
7 or a gain, loss, or deduction from a partnership or S corporation as if it has the same
8 character as it does for federal income tax purposes. If income or a gain, loss, or
9 deduction from a partnership or S corporation is not accounted for separately for
10 federal income tax purposes, a partner or shareholder shall treat the income, gain, loss,
11 or deduction as if it were realized directly from the source from which it was realized
12 by the partnership or S corporation or incurred in the same manner it was incurred by
13 the partnership or S corporation.

14 (c) If the principal purpose of a special allocation of partnership income or a
15 gain, loss, or deduction is the evasion of tax under this chapter, the partner's
16 distributive share is determined as if the partnership agreement did not have the
17 special allocation. In this subsection, "special allocation" means an allocation of the
18 distributive share of partnership income or a gain, loss, or deduction made under the
19 partnership agreement to a partner in a proportion different than the partner's
20 partnership interest.

21 **Sec. 43.22.040. Taxable income of an estate, trust, or beneficiary.** (a) The
22 taxable income of an estate or trust is determined as if the estate or trust were an
23 individual and is subject to adjustments under AS 43.22.030 and reduction under 26
24 U.S.C. 661 (Internal Revenue Code). The department may establish in regulation the
25 method for determining the taxable income of an estate or trust, including the manner
26 in which the adjustments under AS 43.22.030 will be allocated between the estate's or
27 trust's taxable share and a beneficiary's distributive share. Unless otherwise provided
28 by the department in regulation, an allocation must be made in proportion to the
29 estate's or trust's taxable share or the beneficiary's distributive share of the trust or
30 estate for federal income tax purposes.

31 (b) If the principal purpose of a provision of an instrument directing the

1 distribution of income or a gain, loss, or deduction of an estate or trust is the evasion
2 of tax under this chapter, the taxable income of the estate, trust, or beneficiary will be
3 determined as if the instrument did not contain the provision.

4 **Sec. 43.22.045. Nonresident individuals; income derived from or**
5 **connected with a source in the state.** (a) The taxable income of a nonresident
6 individual is the nonresident individual's income derived from or connected with a
7 source in the state, as adjusted under AS 43.22.030. The taxable income of a
8 nonresident individual includes

9 (1) a partner's distributive share of income or a gain, loss, or deduction
10 of the partnership, as determined under AS 43.22.050;

11 (2) a shareholder's pro rata share of an S corporation's income or loss,
12 increased by the reductions for taxes described in 26 U.S.C. 1366(f)(2) and (3)
13 (Internal Revenue Code), as determined under AS 43.22.050;

14 (3) income or loss of a business conducted by a nonresident individual,
15 nonresident estate, or nonresident trust, other than income or loss from a partnership or
16 S corporation, as determined under AS 43.22.050;

17 (4) estate or trust income or a gain, loss, or deduction of the estate or
18 trust, as determined under AS 43.22.055;

19 (5) income or a gain, loss, or deduction from the sale or assignment of
20 a beneficial interest, or other disposition of an interest in tangible personal property in
21 the state, or rental income or loss from the use of tangible personal property in the
22 state; if the income, gain, loss, or deduction is from tangible personal property used or
23 employed both in and outside the state, the amount included in taxable income is
24 determined by multiplying the income, gain, loss, or deduction by a fraction, the
25 numerator of which is the number of days during which the property was used or
26 employed to earn, accrue, or incur the income, gain, loss, or deduction in the state and
27 the denominator of which is the total number of days during the taxable year that the
28 property was used or employed to earn, accrue, or incur the income, gain, loss, or
29 deduction;

30 (6) income or a gain, loss, or deduction from the sale, assignment, or
31 other disposition of an interest in real property in the state, or rental income or loss

1 from the use of real property in the state, including the percentage of ordinary and
2 capital gains received from a real estate investment trust, as defined in 26 U.S.C. 856
3 (Internal Revenue Code), that is attributable to rents from or sale or other disposition
4 of real property located in the state; in this paragraph, income or a gain, loss, or
5 deduction from the sale, assignment of a beneficial interest, or other disposition of real
6 property in the state includes income or a gain, loss, or deduction derived from the sale
7 or assignment of a beneficial interest in a partnership, S corporation, nonpublicly
8 traded C corporation with 100 or fewer shareholders, estate, or trust, if the entity owns
9 real property in the state that has a fair market value equal to or exceeding 50 percent
10 of all assets of the entity on the date of sale, assignment, or other disposition of the
11 taxpayer's interest in the entity; for purposes of this paragraph,

12 (A) only assets owned for at least two years before the date of
13 the sale, assignment, or other disposition of an interest in the entity shall be
14 used to determine the fair market value of all of the assets of the entity on the
15 date of sale, assignment, or other disposition; and

16 (B) the amount of income or a gain, loss, or deduction derived
17 from or connected with a source in the state from the sale, assignment, or other
18 disposition of an interest in an entity that is subject to the provisions of this
19 paragraph is the amount recognized for federal income tax purposes related to
20 the sale, assignment, or disposition, multiplied by a fraction, the numerator of
21 which is the fair market value of the real property located in the state on the
22 date of sale, assignment, or disposition and the denominator of which is the fair
23 market value of all of the assets of the entity on the date of the sale,
24 assignment, or disposition;

25 (7) compensation, salary, or wages for personal services rendered or
26 performed in the state that are derived from a business, trade, profession, occupation,
27 or employment carried on in the state; for purposes of this paragraph, personal
28 services

29 (A) except as otherwise provided in (B) of this paragraph,
30 include services performed

31 (i) in connection with presenting or receiving

1 employment-related training or education in the state;

2 (ii) in connection with a site inspection, review,
3 analysis, or management or any other supervision of a facility located
4 in the state;

5 (iii) in connection with research and development at a
6 facility located in the state or in connection with the installation of new
7 or upgraded equipment or systems at that facility;

8 (iv) as part of a project team working on the attraction
9 or implementation of new investment in a facility located or planned to
10 be located in the state;

11 (v) in connection with fishing, farming, or agriculture in
12 the state; or

13 (vi) for the federal government;

14 (B) do not include services that are casual, isolated,
15 inconsequential, or ancillary to out-of-state services;

16 (8) income derived from a business, trade, profession, occupation, or
17 employment carried on in the state, including income

18 (A) received under a covenant not to compete, a severance
19 agreement, a termination agreement, or unemployment compensation
20 insurance attributable to a business, trade, profession, occupation, or
21 employment previously carried on in the state, regardless of when received;

22 (B) derived from a business, trade, profession, occupation, or
23 employment carried on in the state by an individual who maintains or operates
24 an office, shop, store, warehouse, boat, plane, factory, agency, or other place
25 where the individual's affairs are systematically and regularly carried on,
26 regardless of other transactions carried on outside the state; this subparagraph
27 does not include income from an activity of an individual whose presence in
28 the state is casual, isolated, inconsequential, or ancillary to out-of-state
29 activities, except that, if a business, trade, profession, occupation, or
30 employment is carried on partly in and partly outside the state, other than for
31 the rendering of purely personal services by the individual, the taxable income

1 derived from or connected with a source in the state is determined under
2 AS 43.19 (Multistate Tax Compact) and AS 43.22.030;

3 (9) income from the management or investment function or activities
4 conducted in the state from intangible property;

5 (10) dividends, interest, payments received under an annuity, gains, or
6 other intangible income received from, or attributable to, intangible personal property,
7 including stock, bonds, notes, bank deposits, or annuities, if the intangible personal
8 property is employed in a business, trade, profession, occupation, or employment
9 carried on in the state;

10 (11) a gain derived from a statutory stock option, restricted stock,
11 nonstatutory stock option, or stock appreciation right by a nonresident individual who,
12 at the time the gain is received, performs services in the state for or is employed in the
13 state by the corporation granting the option, stock, or right, as determined in
14 regulations adopted by the department;

15 (12) income from nonqualified deferred compensation plans
16 attributable to services performed in the state, including compensation included in
17 federal gross income under 26 U.S.C. 457A (Internal Revenue Code);

18 (13) proceeds from a gambling activity conducted in the state or lottery
19 tickets purchased in the state, including payments received from a third party for the
20 transfer of the rights to future proceeds related to a gambling activity in the state or
21 lottery tickets purchased in the state;

22 (14) for an S corporation that terminates its taxable status in the state
23 during the tax year, income or a gain recognized on the receipt of payments from an
24 installment sale contract entered into at the time the S corporation was subject to tax in
25 the state, allocated in a manner consistent with the applicable methods and rules under
26 this chapter;

27 (15) royalties or other compensation received for the use of a patent,
28 copyright, secret process or formula, good will, mark, trade brand, franchise, or other
29 property having a taxable or business situs in the state;

30 (16) royalties or other compensation received for the use of a patent if
31 the patent is employed in production, fabrication, manufacturing, or other process in

1 the state;

2 (17) income or a gain from the disposition of an asset if the
3 acquisition, management, or disposition of the asset constitutes an integral part of the
4 nonresident individual's regular trade or business operation;

5 (18) income from the transmission, broadcast, distribution, or
6 dissemination of a service directly or indirectly attributable to the performance in the
7 state of an athlete, entertainer, singer, musician, dancer, comedian, magician,
8 performing artist, actor, actress, or similar person, including syndication fees.

9 (b) A deduction included in taxable income that results from a capital loss,
10 passive activity loss, or net operating loss must be based solely on income or a gain,
11 loss, or deduction derived from or connected with a source in the state. A nonresident
12 individual shall treat a deduction under this subsection in the same manner as the
13 corresponding federal deduction, unless the department requires otherwise in
14 regulation.

15 **Sec. 43.22.050. Business conducted by a nonresident individual, trust, or**
16 **estate; income derived from or connected with a source in the state.** (a) The
17 department shall adopt regulations governing the amount of income or the amount of a
18 gain, loss, or deduction from a business conducted by a nonresident individual, trust,
19 or estate that is derived from or connected with a source in the state for purposes of
20 determining taxable income. Regulations adopted under this subsection must be
21 consistent with AS 43.19 (Multistate Tax Compact) and AS 43.22.045 and include
22 adjustments under AS 43.22.030.

23 (b) The department shall adopt regulations governing the amount of income or
24 the amount of a gain, loss, or deduction that is derived from or connected with a
25 source in the state and is included in a nonresident

26 (1) partner's distributive share for purposes of taxation under this
27 chapter;

28 (2) shareholder's pro-rata share of an S corporation for purposes of
29 taxation under this chapter.

30 (c) The department may by regulation require a taxpayer to allocate rather
31 than apportion income or a gain, loss, or deduction under this section.

1 **Sec. 43.22.055. Nonresident trust, estate, or beneficiary; income derived**
 2 **from or connected with a source in the state.** (a) The department shall adopt
 3 regulations governing whether income or a gain, loss, or deduction of a nonresident
 4 estate or nonresident trust is included in taxable income derived from or connected
 5 with a source in the state. Regulations adopted under this subsection must be
 6 consistent with the remainder of this section and AS 43.22.045.

7 (b) A nonresident beneficiary shall include in taxable income derived from or
 8 connected with a source in the state a distribution from an estate or trust as if the
 9 nonresident beneficiary earned or incurred the income or a gain, loss, or deduction
 10 attributable to the distribution directly from the source. For purposes of this
 11 subsection, the department may establish one or more methods for a nonresident
 12 beneficiary to determine whether income or a gain, loss, or deduction is attributable to
 13 a distribution. The department shall consistently apply a method from year to year and
 14 apply the same method to other nonresident beneficiaries of the same trust or estate.
 15 Nothing in this subsection requires the department to give effect to a provision of an
 16 instrument creating an estate or trust if the department reasonably believes that the
 17 principal purpose of the provision is to evade the tax imposed under this chapter.

18 **Sec. 43.22.060. Part-year resident individual, trust, or estate; residency**
 19 **income; income derived from or connected with a source in the state.** (a) Except as
 20 otherwise provided in this section, the taxable income of a part-year resident
 21 individual, trust, or estate is the sum of

22 (1) the taxable income of the part-year resident individual, trust, or
 23 estate during the period of residency; and

24 (2) the taxable income derived from or connected with a source in the
 25 state for the period of nonresidency of the individual, trust, or estate.

26 (b) The department shall adopt regulations to determine the taxable income of
 27 a part-year resident taxpayer who is granted a statutory stock option, restricted stock,
 28 nonstatutory stock option, or a stock appreciation right and who, during the grant
 29 period, performs services in the state for, or is employed in the state by, the
 30 corporation granting the option, stock, or right.

31 **Sec. 43.22.065. Personal service corporations and S corporations formed**

1 **or used to evade income tax.** (a) The department may allocate all income,
2 deductions, credits, exclusions, and other allowances between a personal service
3 corporation or S corporation and its employee-owners if the

4 (1) personal service corporation or S corporation performs
5 substantially all of its services for or on behalf of another corporation, partnership, or
6 other entity and the effect is the evasion of income tax; and

7 (2) allocation is necessary to reflect the source and amount of the
8 income, regardless of whether the corporation is otherwise taxable.

9 (b) For purposes of this section, evasion of income tax occurs when a personal
10 service corporation or S corporation is used to

11 (1) reduce the taxable income of a resident or the taxable income of a
12 nonresident derived from or connected with a source in the state; or

13 (2) secure the benefit of an expense, deduction, credit, exclusion, or
14 other allowance for any employee-owner that would not otherwise apply under this
15 chapter.

16 (c) The constructive ownership of stock rules under 26 U.S.C. 318 (Internal
17 Revenue Code) apply to this section, except that "5 percent" shall be substituted for
18 "50 percent" in 26 U.S.C. 318(a)(2)(C) (Internal Revenue Code).

19 (d) In this section, all persons specified in 26 U.S.C. 267(b) (Internal Revenue
20 Code) shall be treated as one entity.

21 (e) In this section,

22 (1) "employee-owner" means any employee who owns, on any day
23 during the taxable year, more than 10 percent of the outstanding stock of a personal
24 service corporation or S corporation;

25 (2) "personal service corporation" means a corporation whose principal
26 activity is the performance of personal services that are substantially performed by the
27 employee-owners of the corporation.

28 **Sec. 43.22.070. Determination of taxable year and method of accounting.**

29 (a) For purposes of the tax imposed under this chapter, a taxpayer's

30 (1) taxable year is the same as the taxpayer's taxable year for federal
31 income tax purposes; and

1 (2) method of accounting is the same as the taxpayer's method of
2 accounting for federal income tax purposes.

3 (b) The department shall adopt regulations to determine the taxable income of
4 a taxpayer whose method of accounting changes during a taxable year or between
5 taxable years.

6 **Sec. 43.22.075. Returns and payment of taxes.** (a) A taxpayer shall file with
7 the department a return setting out

8 (1) the amount of tax due under this chapter; and

9 (2) other information necessary to carry out this chapter, as required by
10 the department in regulation.

11 (b) A person required to file a return under this chapter shall file the return on
12 a form or in a format prescribed by the department. The return is due to the department
13 at the same time and in the same manner, including extensions, as the taxpayer's
14 federal income tax return to the United States Internal Revenue Service. A return filed
15 under this chapter must be made under oath and on penalty of perjury.

16 (c) The total amount of tax imposed by this chapter is due and payable to the
17 department at the same time and in the same manner as the federal individual income
18 tax payable to the United States Internal Revenue Service.

19 (d) A taxpayer, upon request by the department, shall furnish to the
20 department a true and correct copy of a return that the taxpayer has filed with the
21 United States Internal Revenue Service.

22 (e) A taxpayer shall notify the department in writing of an alteration in, or
23 modification of, the taxpayer's federal income tax return and of a recomputation of tax
24 or determination of deficiency, whether with or without assessment. A full statement
25 of the facts must accompany the notice. A taxpayer shall file the notice not later than
26 60 days after the final determination of the alteration, modification, recomputation, or
27 deficiency and shall pay any additional tax due under this chapter at that time. In this
28 subsection, "final determination" means the time that an amended federal return is
29 filed, a notice of deficiency or an assessment is mailed to the taxpayer by the Internal
30 Revenue Service, and the taxpayer has exhausted rights of appeal under federal law.

31 (f) The department may credit or refund overpayments of taxes, taxes

1 erroneously or illegally assessed or collected, penalties collected without authority,
 2 and taxes that are found unjustly assessed or excessive in amount, or otherwise
 3 wrongfully collected. The department shall, in regulation, set limitations, specify the
 4 manner in which claims for credits or refunds are made, and give notice of allowance
 5 or disallowance. When a refund is allowed to a taxpayer, the refund may be paid out
 6 of the general fund on a warrant issued under a voucher approved by the department.

7 (g) A partnership, S corporation, estate, or trust shall provide to its partners,
 8 beneficiaries, or shareholders, and to the department, all information necessary for its
 9 partners, beneficiaries, and shareholders to comply with this chapter.

10 (h) An individual is not required to file a return under this section
 11 electronically, but a person employed to prepare and file an income tax return for an
 12 individual shall file the return for that individual electronically.

13 (i) The department shall adopt regulations that set out requirements for a
 14 spouse, upon request, to be partially or fully relieved from joint and several liability
 15 resulting from the joint filing of a tax return.

16 **Sec. 43.22.080. Tax withholding on wages of individuals.** (a) Every
 17 employer making payment of wages or salaries

18 (1) shall deduct and withhold an amount of tax computed in a manner
 19 to approximate the amount of tax due on those wages and salaries under this chapter
 20 for that taxable year;

21 (2) shall remit the tax withheld to the department accompanied by a
 22 return on a form prescribed by the department at the times required by the department
 23 by regulation;

24 (3) is liable for the payment of the tax required to be deducted and
 25 withheld under this section but is not liable to any individual for the amount of the
 26 payment; and

27 (4) shall furnish to an employee on or before January 31 of the
 28 succeeding year, or within 30 days after a request by the employee after an employee's
 29 or individual's termination if the 30-day period ends before January 31, a written
 30 statement on a form prescribed by the department showing

31 (A) the name and taxpayer identification number of the

1 employer;

2 (B) the name and social security number of the employee;

3 (C) the total amount of wages and salary for the taxable year;

4 and

5 (D) the total amount deducted and withheld as tax under this
6 chapter for the taxable year.

7 (b) The department shall publish the rate of withholding required by this
8 section.

9 **Sec. 43.22.085. Withholding on nonresident partners; composite returns.**

10 (a) Unless otherwise provided by this section, a partnership that is required to file an
11 annual information return under subchapter K of the Internal Revenue Code (26
12 U.S.C. 701 - 761) shall file a partnership return as prescribed by the department and
13 shall report any income, gains, losses, or deductions that are derived from or
14 connected with a source in the state, as determined under this chapter.

15 (b) A partnership that is required to file a return under (a) of this section shall
16 withhold income tax from a nonresident partner's distributive share of the partnership's
17 income or a gain, loss, or deduction derived from or connected with a source in the
18 state at the highest marginal income tax rate applicable to individuals for the taxable
19 year.

20 (c) Withholding under this section is not required by a partnership that

21 (1) is a publicly traded partnership, as defined in 26 U.S.C. 7704(b)
22 (Internal Revenue Code); and

23 (2) files with the department an annual information return reporting the
24 name, address, taxpayer identification number, and other information requested by the
25 department concerning each unitholder whose distributive share of partnership
26 income, regardless of source, is more than \$1,000.

27 (d) The department shall adopt regulations that allow a partnership subject to
28 withholding under this section to file a composite return.

29 **Sec. 43.22.090. Dividend tax credit.** An individual who receives a dividend
30 under AS 43.23.005 is entitled to a credit against the tax under this chapter equal to
31 the amount of the permanent fund dividend paid during the tax year. The dividend of a

1 dependent may only be used as a credit against the tax due on income of the
 2 dependent. The credit under this section is not refundable and may not be carried
 3 forward for a subsequent tax year.

4 **Sec. 43.22.095. Administration.** (a) The department shall adopt necessary
 5 regulations and forms to implement and interpret this chapter, including regulations
 6 and forms for the electronic filing and payment of tax due under this chapter. Federal
 7 regulations issued under the Internal Revenue Code shall be considered persuasive
 8 authority in interpreting any provision of the Internal Revenue Code on which the tax
 9 imposed by this chapter relies, whether or not a federal regulation has been
 10 specifically incorporated into a department regulation, unless the federal regulation

11 (1) conflicts with a provision of this chapter;

12 (2) conflicts with a regulation adopted by the department; or

13 (3) is inconsistent with the purposes of this chapter.

14 (b) A transaction or payment between related persons must have economic
 15 substance, must serve a bona fide business purpose, and must not have occurred for
 16 the primary purpose of lowering the tax due under this chapter. The department, after
 17 review or audit of a taxpayer's return, may determine whether there is sufficient
 18 documentation or whether a transaction or payment meets the requirements of this
 19 subsection. If the department determines that the documentation, transaction, or
 20 payment fails to meet the requirements of this subsection, the department may adjust
 21 the amount of a payment or transaction, disregard the payment or transaction, or make
 22 another adjustment necessary for determining the tax under this chapter. If a payment
 23 in an amount greater than \$500,000 is made or required to be made from one person to
 24 a related person, the related persons shall submit documentation substantiating that the
 25 amount of the payment is consistent with 26 U.S.C. 482 (Internal Revenue Code).
 26 Payments subject to this subsection include payments for interest, royalties,
 27 management fees, services, inventory, tangible personal property, intangible property,
 28 and real property. In this subsection, "related person" means a person that satisfies the
 29 definition of "related persons" in 26 U.S.C. 144 or 147 or a person in a relationship as
 30 described in 26 U.S.C. 267(b) (Internal Revenue Code).

31 (c) A tax deficiency assessed by the department under this section is assumed

1 to be correct. A taxpayer has the burden of proving that the tax deficiency is
2 erroneous.

3 (d) The tax collected by the department under this chapter shall be deposited
4 into the general fund and accounted for separately.

5 **Sec. 43.22.100. References to Internal Revenue Code.** (a) Unless
6 inconsistent with this chapter, sections 26 U.S.C. 6654, 6662, 6664, 6694, 6695, 6700
7 - 6702, 6707, 6713, 7201, 7202, 7206, 7207, 7216, 7407, and 7408 (Internal Revenue
8 Code), as those sections read on January 1, 2020, are incorporated by reference as a
9 part of this chapter and supersede conflicting provisions in AS 43.05 and AS 43.10.

10 (b) When provisions of the Internal Revenue Code incorporated by reference
11 under (a) of this section refer to rules and regulations adopted by the United States
12 Commissioner of Internal Revenue, they are regarded as regulations adopted by the
13 department under this chapter, unless the department adopts specific regulations in
14 their place.

15 **Sec. 43.22.105. Information released to a banking institution.**
16 Notwithstanding AS 43.05.230, information on an individual income tax return may
17 be released to a banking institution to verify the direct deposit of an income tax refund
18 or correct an error in that deposit.

19 **Sec. 43.22.150. Definitions.** In this chapter,

20 (1) "domicile" means an individual's true, fixed, principal, and
21 permanent home, to which the individual intends to return even if currently living
22 elsewhere; if an individual has two or more homes, "domicile" means the home that
23 the individual regards and uses as the individual's more permanent home; once
24 established, a domicile remains the individual's domicile until the individual
25 demonstrates a real change of intent and moves to a new domicile; indications of
26 domicile include the

27 (A) location of the place of employment of the individual;

28 (B) location of real property owned by the individual;

29 (C) registration and physical location of motor vehicles, planes,
30 boats, and snow machines owned by the individual;

31 (D) location of a bank account or active checking account of

- 1 the individual;
- 2 (E) address where the individual receives mail;
- 3 (F) location of a school where the individual or a member of
- 4 the individual's immediate family
- 5 (i) attends; or
- 6 (ii) receives resident tuition;
- 7 (G) location of an organization of which the individual is a
- 8 member;
- 9 (H) location of a parent, child, grandchild, or great-grandchild;
- 10 (I) location of dental and medical personnel that provide
- 11 services to the individual on a regular or consistent basis;
- 12 (J) filing of a prior year tax return by the individual as a
- 13 resident or nonresident;
- 14 (K) location where an individual is registered to vote;
- 15 (L) location where an individual holds a resident fishing,
- 16 hunting, or trapping license;
- 17 (2) "federal adjusted gross income" has the meaning given to "adjusted
- 18 gross income" in 26 U.S.C. 62;
- 19 (3) "fiduciary" means a guardian, trustee, executor, administrator,
- 20 receiver, or conservator or a person, whether individual or corporate, acting in a
- 21 similar position of special confidence toward another;
- 22 (4) "Internal Revenue Code" means the Internal Revenue Code (26
- 23 U.S.C. 1 et seq.), as amended;
- 24 (5) "irrevocable trust" means a trust or portion of a trust that is not
- 25 subject to a power to revest title in a person whose property constitutes the trust or a
- 26 portion of the trust;
- 27 (6) "nonresident estate" means an estate other than a resident estate or
- 28 part-year resident estate;
- 29 (7) "nonresident individual" means an individual who is not a resident
- 30 of the state for any portion of the taxable year;
- 31 (8) "nonresident trust" means a trust other than a resident trust or part-

1 year resident trust;

2 (9) "partner" means a partner as defined in 26 U.S.C. 7701(a) (Internal
3 Revenue Code) and includes a member of a limited liability company or similar entity
4 that is treated as a partnership for federal income tax purposes;

5 (10) "partnership" means an entity as defined in 26 U.S.C. 7701(a)
6 (Internal Revenue Code) and includes a limited liability company and a similar entity
7 treated as a partnership for federal income tax purposes;

8 (11) "part-year resident estate" means an estate that is a resident of the
9 state for a portion of but not the entire taxable year;

10 (12) "part-year resident individual" means an individual who is a
11 resident of the state for a portion of but not the entire taxable year;

12 (13) "part-year resident trust" means a trust that is a resident of the
13 state for a portion of but not the entire taxable year;

14 (14) "resident estate" means the estate of a

15 (A) decedent who at the time of death was a resident of the
16 state, regardless of the residence of the fiduciary or beneficiary, if the
17 disposition or administration of the estate is subject to state law; or

18 (B) person who, at the time of commencement of a bankruptcy
19 proceeding under Title 11 of the United States Code, was a resident of the
20 state;

21 (15) "resident individual" means an individual who

22 (A) meets the eligibility requirements for a permanent fund
23 dividend under AS 43.23.005;

24 (B) receives a tax benefit available only to an individual
25 domiciled in the state; or

26 (C) is domiciled in the state for the entire taxable year unless
27 the individual maintains a permanent place of abode outside the state and
28 spends, in the aggregate, not more than 30 days during the taxable year in the
29 state;

30 (16) "resident trust" means a trust or a portion of a trust consisting of
31 property

1 (A) transferred by will of a decedent who at the time of death
 2 was a resident of the state if the disposition or administration of the property is
 3 subject to state law; or

4 (B) of a person who was a resident at the time the property was
 5 transferred to the trust if, at the time of the transfer, the trust was

6 (i) an irrevocable trust;

7 (ii) a revocable trust and the trust has not become
 8 irrevocable; or

9 (iii) a revocable trust and the trust later became
 10 irrevocable at a time the person transferring property to the trust was a
 11 resident;

12 (17) "revocable trust" means a trust or portion of a trust that is subject
 13 to a power, exercisable immediately or at a future time, to revest title in a person
 14 whose property constitutes the trust or portion of the trust;

15 (18) "S corporation" means a corporation that has elected to file a
 16 federal income tax return under 26 U.S.C. 1361 - 1379 (Internal Revenue Code);

17 (19) "taxable income" means income taxable under this chapter;

18 (20) "taxable year" means the calendar year or a fiscal year ending
 19 during the calendar year;

20 (21) "taxpayer" means a person subject to a tax imposed by this
 21 chapter.

22 * **Sec. 3.** AS 43.05.085; AS 43.20.012(b), and 43.20.013 are repealed.

23 * **Sec. 4.** The uncodified law of the State of Alaska is amended by adding a new section to
 24 read:

25 **APPLICABILITY.** AS 43.22, added by sec. 2 of this Act, applies to income received
 26 on or after the effective date of sec. 2 of this Act.

27 * **Sec. 5.** The uncodified law of the State of Alaska is amended by adding a new section to
 28 read:

29 **TRANSITION: REGULATIONS.** The Department of Revenue may adopt regulations
 30 necessary to implement this Act. The regulations take effect under AS 44.62 (Administrative
 31 Procedure Act), but not before the effective date of the law implemented by the regulation.

- 1 * **Sec. 6.** Section 5 of this Act takes effect immediately under AS 01.10.070(c).
- 2 * **Sec. 7.** Except as provided in sec. 6 of this Act, this Act takes effect January 1, 2023.