

CS FOR HOUSE BILL NO. 115(FIN) am(efd fld)(fld S)

IN THE LEGISLATURE OF THE STATE OF ALASKA

THIRTIETH LEGISLATURE - FIRST SESSION

BY THE HOUSE FINANCE COMMITTEE

Amended: 5/12/17

Offered: 4/12/17

Sponsor(s): HOUSE FINANCE COMMITTEE

A BILL

FOR AN ACT ENTITLED

"An Act bearing the short title of the 'Education Funding Act'; relating to the taxation of income of individuals, partners, shareholders in S corporations, trusts, and estates; relating to a payment against the individual income tax from the permanent fund dividend disbursement; and repealing tax credits applied against the tax on individuals under the Alaska Net Income Tax Act."

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

*** Section 1.** The uncoded law of the State of Alaska is amended by adding a new section to read:

SHORT TITLE. This Act may be known as the Education Funding Act.

*** Sec. 2.** The uncoded law of the State of Alaska is amended by adding a new section to read:

LEGISLATIVE INTENT. It is the intent of the legislature that, under this Act,

(1) income up to \$14,300 for an individual, plus income from permanent fund

dividends, will not be subject to income tax under AS 43.22;

(2) income up to \$28,600 for two individuals filing jointly who do not have dependents, plus income from permanent fund dividends, will not be subject to the income tax under AS 43.22;

(3) an individual, or two individuals filing jointly, will receive an additional \$4,000 deduction for each dependent, resulting in an increase in the amounts stated in (1) and (2) of this section of \$4,000 for each dependent.

* **Sec. 3.** AS 43.05.045(a) is amended to read:

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

* **Sec. 4.** AS 43 is amended by adding a new chapter to read:

Chapter 22. Individual Income Tax.

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

(1) resident;

(2) nonresident that is derived from or connected with a source in the state.

(b) The tax under this section for an individual is determined as follows:

If the taxable income is	Then the tax is
Less than \$10,300	\$0
\$10,300 but less than \$50,000	2.5 percent of the amount in excess of \$10,300
\$50,000 but less than \$100,000	\$992.50 plus 4 percent of the amount in excess of \$50,000

1	\$100,000 but less than \$200,000	\$2,992.50 plus 5 percent of the
2		amount in excess of \$100,000
3	\$200,000 but less than \$250,000	\$7,992.50 plus 6 percent of the
4		amount in excess of \$200,000
5	\$250,000 or more	\$10,992.50 plus 7 percent of the
6		amount in excess of \$250,000.

7 (c) Except as otherwise provided in this section, the tax under this section for
8 two individuals who file a joint federal income tax return is determined as follows:

9	If the taxable income is	Then the tax is
10	Less than \$20,600	\$0
11	\$20,600 but less than \$100,000	2.5 percent of the amount in
12		excess of \$20,600
13	\$100,000 but less than \$200,000	\$1,985 plus 4 percent of the amount in
14		excess of \$100,000
15	\$200,000 but less than \$400,000	\$5,985 plus 5 percent of the amount in
16		excess of \$200,000
17	\$400,000 but less than \$500,000	\$15,985 plus 6 percent of the amount
18		in excess of \$400,000
19	\$500,000 or more	\$21,985 plus 7 percent of the amount
20		in excess of \$500,000.

21 (d) An individual who is eligible to file a joint federal income tax return but
22 who files an individual federal income tax return shall determine the tax imposed by
23 this chapter under (b) of this section.

24 (e) Two resident individuals who are eligible to file a joint federal income tax
25 return but who do not, individually or jointly, file a federal income tax return may
26 elect to determine the tax imposed by this chapter either

27 (1) individually under (b) of this section; or

28 (2) jointly under (c) of this section.

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

31 (1) individually under (b) of this section; or

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

Sec. 43.22.015. Calculation of tax on a nonresident individual. (a) Except as otherwise provided in AS 43.22.010(f)(2) or (b) of this section, the tax on a nonresident individual is the product of

(1) the tax determined under AS 43.22.010(b) on the nonresident individual's taxable income computed as if the nonresident individual were a resident individual but taking a reduction under AS 43.22.030(b)(2); and

(2) a fraction, the

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

(B) denominator of which is the nonresident individual's taxable income computed as if the nonresident individual were a resident individual.

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

Sec. 43.22.020. Tax on trusts and estates. (a) A tax is imposed for each taxable year or portion of a taxable year on the taxable income of a resident or nonresident trust or estate. Except as provided in (b) of this section, the tax under this section for a trust or estate is determined as follows:

If the taxable income is	Then the tax is
Less than \$50,000	2.5 percent of the amount in excess of \$0
\$50,000 but less than \$100,000	\$1,250 plus 4 percent of the amount in excess of \$50,000
\$100,000 but less than \$200,000	\$3,250 plus 5 percent of the amount in excess of \$100,000
\$200,000 but less than \$250,000	\$8,250 plus 6 percent of the amount in

1 excess of \$200,000
 2 \$250,000 or more \$11,250 plus 7 percent of the amount
 3 in excess of \$250,000.

4 (b) A tax of 2.5 percent is imposed on the taxable income of a resident or
 5 nonresident Alaska Native Settlement Trust that has elected for alternative federal tax
 6 treatment under 26 U.S.C. 646 (Internal Revenue Code).

7 (c) In this section, the taxable income of a nonresident trust or estate is the
 8 income of the trust or estate that is derived from or connected with a source in the
 9 state.

10 (d) A trust is not subject to tax under this chapter if
 11 (1) all of the trustees of the trust are nonresidents;
 12 (2) the entire corpus of the trust, including real, tangible, and
 13 intangible property, is located outside the state; and
 14 (3) no income or gains of the trust are derived from or connected with
 15 a source in the state.

16 (e) For purposes of (d)(1) of this section, a trustee that is a nonresident
 17 banking corporation at the time the banking corporation becomes a trustee is a
 18 nonresident trustee even if the banking corporation later becomes a resident trustee
 19 because it is acquired by or becomes an office or branch of a resident trustee.

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

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

- 25 (1) "disabled beneficiary" means an individual who has
 26 (A) a physical or mental impairment that substantially limits
 27 one or more major life activities; or
 28 (B) a condition that may require the use of a prosthesis, special
 29 equipment for mobility, or a service animal;
 30 (2) "special needs trust" has the meaning given in AS 13.36.215(b).

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

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

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

7 (1) for a resident individual, trust, or estate may not exceed the
 8 individual's, trust's, or estate's tax due under this chapter before credits are applied,
 9 multiplied by a ratio, the numerator of which is the portion of the individual's, trust's,
 10 or estate's taxable income that is derived from or connected with a source in another
 11 state or the political subdivision of another state and the denominator of which is the
 12 resident individual's, trust's, or estate's taxable income;

13 (2) for a part-year resident individual, trust, or estate may not exceed
 14 the individual's, trust's, or estate's tax due for the period of state residency before
 15 credits are applied, multiplied by a ratio, the numerator of which is the individual's,
 16 trust's, or estate's taxable income derived from or connected with a source in another
 17 state or the political subdivision of another state during the period of state residency
 18 and the denominator of which is the part-year resident individual's, trust's, or estate's
 19 taxable income during the period of state residency;

20 (3) may not reduce the tax due under this chapter to less than the tax
 21 that would have been due if the income derived from or connected with a source in
 22 another state or the political subdivision of another state and subject to taxation by the
 23 other state or political subdivision had been excluded from the resident or part-year
 24 resident individual's, trust's, or estate's taxable income during the calculation of tax
 25 under this chapter before the application of credits.

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

1 or political subdivision.

2 (d) A taxpayer is not allowed a credit under this section for taxes paid to
3 another jurisdiction if the taxpayer has or will claim a credit against the income tax
4 imposed by the other jurisdiction for the tax paid or payable under this chapter.

5 (e) Income tax imposed on a partner or the shareholder of an S corporation on
6 the income of the partnership or S corporation, including tax paid by the partnership or
7 S corporation to satisfy the tax liability of the partner or shareholder, may be included
8 in the calculation of a credit under this section. Tax imposed on the partnership or S
9 corporation that is the direct liability of the partnership or S corporation and not that of
10 the partner or shareholder may not be included in the calculation of a credit under this
11 section.

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

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

15 (A) interest on obligations of another state, a political
16 subdivision of another state, the public instrumentality of another state, or the
17 local authority of another state;

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

20 (i) the state;

21 (ii) a municipality of the state; or

22 (iii) a public instrumentality, public authority, or public
23 corporation created under state law;

24 (C) a loss from the sale or exchange of shares in a unit
25 investment trust if the loss is attributable to an obligation issued by or on
26 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 (D) interest or dividends on obligations or securities issued by

the United States, or an authority, commission, or instrumentality of the United States, that the Internal Revenue Code exempts from federal income tax but does not prevent from including;

(E) income taxes under this chapter;

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

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

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

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

(ii) the trust is a resident trust;

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

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

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

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

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

(C) an ordinary and necessary expense, including an interest expense, paid or incurred during the taxable year that is directly or indirectly related to income exempt under the Internal Revenue Code but taxable by the state;

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

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

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

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

(i) the state;

(ii) a municipality of the state; or

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

(H) a permanent fund dividend received under AS 43.23;

(b) In addition to the adjustments made to taxable income under (a) of this section, a taxpayer may receive a reduction from federal adjusted gross income for each exemption claimed on a taxpayer's federal income tax return for the individual, an individual filing jointly with the individual, or a dependent of the individual. The reduction under this subsection for a

(1) resident taxpayer is \$4,000 for each exemption claimed;

(2) nonresident is, for each exemption claimed, the product of \$4,000 and a fraction, the numerator of which is the nonresident individual's income taxable under AS 43.22.045, computed without the reduction under this subsection, and the denominator of which is the nonresident individual's taxable income computed as if the nonresident individual were a resident individual and without the reduction under this subsection; the reduction under this paragraph may not exceed \$4,000 for each exemption claimed.

(c) The reduction under (b) of this section may not

(1) be claimed by a trust;

(2) reduce a taxpayer's tax liability under this chapter to below zero.

(d) When calculating taxable income, a taxpayer

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

(2) may carry over a net operating loss under 26 U.S.C. 172(b)(1)(A)(ii) (Internal Revenue Code), except that a loss may not be carried over

1 for more than five years; for a taxpayer subject to AS 43.19 (Multistate Tax Compact),
 2 the amount of a net operating loss allowed to be carried over is limited to the amount
 3 apportioned to the state in the taxable year in which the loss was generated under
 4 AS 43.19 (Multistate Tax Compact);

5 (3) shall include the modifications required by AS 43.20.144(b)(2),
 6 concerning intangible drilling and development costs, AS 43.20.144(b)(3), concerning
 7 percentage depletion, and AS 43.20.144(b)(3), concerning depreciation.

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

9 A partner or shareholder shall make an adjustment described in AS 43.22.030 to an
 10 item of income, gain, loss, or deduction from a partnership or S corporation in
 11 proportion to a partner's distributive share of a partnership or a shareholder's pro rata
 12 share of an S corporation. If a partner's distributive or a shareholder's pro rata share of
 13 an adjustment is not required to be accounted for separately for federal income tax
 14 purposes, the partner's or shareholder's share of the adjustment must be determined in
 15 proportion to the partner's or shareholder's share of partnership or S corporation
 16 income or losses for federal income tax purposes.

17 (b) In determining taxable income, a partner or shareholder shall treat an item
 18 of income, gain, loss, or deduction from a partnership or S corporation as if it has the
 19 same character as it does for federal income tax purposes. If an item of income, gain,
 20 loss, or deduction from a partnership or S corporation is not accounted for separately
 21 for federal income tax purposes, a partner or shareholder shall treat it as if the item of
 22 income, gain, loss, or deduction was realized directly from the source from which it
 23 was realized by the partnership or S corporation or incurred in the same manner in
 24 which it was incurred by the partnership or S corporation.

25 (c) If the principal purpose of a special allocation of an item of partnership
 26 income, gain, loss, or deduction is the avoidance or evasion of tax under this chapter,
 27 the partner's distributive share is determined as if the partnership agreement did not
 28 contain the special allocation. In this subsection, "special allocation" means an
 29 allocation of the distributive share of an item of partnership income, gain, loss,
 30 expense, or deduction made under the partnership agreement to a partner in a
 31 proportion different than the partner's partnership interest.

1 **Sec. 43.22.040. Taxable income of an estate, trust, or beneficiary.** (a) The
 2 taxable income of an estate or trust is determined as if the estate or trust were an
 3 individual and is subject to adjustments under AS 43.22.030 and reduction under
 4 section 26 U.S.C. 661 (Internal Revenue Code). The department may establish in
 5 regulation the method for determining the taxable income of an estate or trust,
 6 including the manner in which the adjustments under AS 43.22.030 will be allocated
 7 between the estate's or trust's taxable share and a beneficiary's distributive share.
 8 Unless otherwise provided by the department in regulation, an allocation must be
 9 made in proportion to the estate's or trust's taxable share or the beneficiary's
 10 distributive share of the trust or estate for federal income tax purposes.

11 (b) If the principal purpose for a provision of an instrument directing the
 12 distribution of an item of income, gain, loss, or deduction of an estate or trust is the
 13 avoidance or evasion of tax under this chapter, the taxable income of the estate, trust,
 14 or beneficiary shall be determined as if the instrument did not contain that provision.

15 **Sec. 43.22.045. Nonresident individuals; income derived from or**
 16 **connected with a source in the state.** (a) The taxable income of a nonresident
 17 individual is the nonresident individual's income that is derived from or connected
 18 with a source in the state, as adjusted under AS 43.22.030. Taxable income of a
 19 nonresident individual includes

20 (1) a partner's distributive share of an item of income, gain, loss, or
 21 deduction of a partnership as determined under AS 43.22.050;

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

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

28 (4) the share of estate or trust income, gain, loss, or deduction
 29 determined under AS 43.22.055;

30 (5) an item of income, gain, loss, or deduction from the sale or
 31 assignment of a beneficial interest, or other disposition of an interest in tangible

personal property in the state, or rental income or loss from the use of tangible personal property in the state; if the item of income, gain, loss, or deduction is from tangible personal property used or employed both in and outside the state, the amount included in taxable income is determined by multiplying the item of income, gain, loss, or deduction by a fraction, the denominator of which is the total number of days during the taxable year that the property was used or employed to earn, accrue, or incur the item of income, gain, loss, or deduction and the numerator of which is the number of the days during which the property was used or employed to earn, accrue, or incur the item of income, gain, loss, or deduction in the state;

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

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

(B) the amount of an item of income, gain, loss, or deduction derived from or connected with a source in the state from the sale, assignment, or other disposition of an interest in an entity that is subject to the provisions of this paragraph is the amount recognized for federal income tax purposes

related to the sale, assignment, or disposition, multiplied by a fraction, the numerator of which is the fair market value of the real property located in the state on the date of sale, assignment, or disposition and the denominator of which is the fair market value of all of the assets of the entity on the date of the sale, assignment, or disposition;

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

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

(i) in connection with presenting or receiving employment-related training or education in the state;

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

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

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

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

(vi) for the federal government;

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

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

(A) received under a covenant not to compete, a severance agreement, a termination agreement, or unemployment compensation

1 insurance attributable to a business, trade, profession, occupation, or
 2 employment previously carried on in the state, regardless of when received;

3 (B) derived from a business, trade, profession, occupation, or
 4 employment carried on in the state by an individual who maintains or operates
 5 an office, shop, store, warehouse, boat, plane, factory, agency, or other place
 6 where the individual's affairs are systematically and regularly carried on,
 7 regardless of other transactions carried on outside the state; this subparagraph
 8 does not include income from an activity of an individual whose presence in
 9 the state is casual, isolated, inconsequential, or ancillary to out-of-state
 10 activities, except that, if a business, trade, profession, occupation, or
 11 employment is carried on partly in and partly outside the state, other than for
 12 the rendering of purely personal services by the individual, the taxable income
 13 derived from or connected with a source in the state is determined under
 14 AS 43.19 (Multistate Tax Compact) and AS 43.22.030;

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

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

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

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

30 (13) proceeds from a gambling activity conducted in the state or lottery
 31 tickets purchased in the state, including payments received from a third party for the

1 transfer of the rights to future proceeds related to a gambling activity in the state or
 2 lottery tickets purchased in the state;

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

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

10 (16) royalties or other compensation received for the use of a patent if
 11 the patent is employed in production, fabrication, manufacturing, or other process in
 12 the state;

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

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

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

26 **Sec. 43.22.050. Business conducted by a nonresident individual, trust, or**
 27 **estate; income derived from or connected with a source in the state.** (a) The
 28 department shall adopt regulations governing the amount of an item of income, gain,
 29 loss, or deduction from a business conducted by a nonresident individual, trust, or
 30 estate that is derived from or connected with a source in the state for purposes of
 31 determining taxable income. Regulations adopted under this subsection must be

consistent with AS 43.19 (Multistate Tax Compact) and AS 43.22.045 and include adjustments under AS 43.22.030.

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

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

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

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

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

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

Sec. 43.22.060. Part-year resident individual, trust, or estate; residency income; income derived from or connected with a source in the state. (a) Except as

otherwise provided in this section, the taxable income of a part-year resident individual, trust, or estate is the sum of

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

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

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

Sec. 43.22.065. Personal service and S corporations formed or used to avoid or evade income tax. (a) The department may allocate all income, deductions, credits, exclusions, and other allowances between a personal service or S corporation and its employee-owners if the

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

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

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

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

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

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

(d) In this section, all persons specified in 26 U.S.C. 267(b) (Internal Revenue

Code) shall be treated as one entity.

(e) In this section,

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

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

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

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

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

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

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

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

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

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

(b) The department shall determine and publish the federal adjusted gross income below which an individual is not required to file a tax return under this section.

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

(d) The total amount of tax imposed by this chapter is due and payable to the

1 department at the same time and in the same manner as the federal individual income
2 tax payable to the United States Internal Revenue Service.

3 (e) A taxpayer, upon request by the department, shall furnish to the
4 department a true and correct copy of a return that the taxpayer has filed with the
5 United States Internal Revenue Service.

6 (f) A taxpayer shall notify the department in writing of an alteration in, or
7 modification of, the taxpayer's federal income tax return and of a recomputation of tax
8 or determination of deficiency, whether with or without assessment. A full statement
9 of the facts must accompany the notice. A taxpayer shall file the notice not later than
10 60 days after the final determination of the alteration, modification, recomputation, or
11 deficiency and shall pay any additional tax due under this chapter at that time. In this
12 subsection, "final determination" means the time that an amended federal return is
13 filed, a notice of deficiency or an assessment is mailed to the taxpayer by the Internal
14 Revenue Service, and the taxpayer has exhausted rights of appeal under federal law.

15 (g) The department may credit or refund overpayments of taxes, taxes
16 erroneously or illegally assessed or collected, penalties collected without authority,
17 and taxes that are found unjustly assessed or excessive in amount, or otherwise
18 wrongfully collected. The department shall, in regulation, set limitations, specify the
19 manner in which claims for credits or refunds are made, and give notice of allowance
20 or disallowance. When a refund is allowed to a taxpayer, the refund may be paid out
21 of the general fund on a warrant issued under a voucher approved by the department.

22 (h) A partnership, S corporation, estate, or trust shall provide to its partners,
23 beneficiaries, or shareholders, and to the department, all information necessary for its
24 partners, beneficiaries, and shareholders to comply with this chapter.

25 (i) An individual is not required to file a return under this section
26 electronically, but a person employed to prepare and file income tax returns shall file
27 the returns for those individuals electronically.

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

31 **Sec. 43.22.080. Tax withholding on wages of individuals.** (a) Every

1 employer making payment of wages or salaries

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

5 (2) shall remit the tax withheld to the department accompanied by a
6 return on a form prescribed by the department at the times required by the department
7 by regulation;

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

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

15 (A) the name and taxpayer identification number of the
16 employer;

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

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

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

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

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

25 (a) Unless otherwise provided by this section, a partnership that is required to file an
26 annual information return under subchapter K of the Internal Revenue Code (26
27 U.S.C. 701 - 777) shall file a partnership return as prescribed by the department and
28 shall report any items of income, gain, loss, or deduction that are derived from or
29 connected with a source in the state, as determined under this chapter.

30 (b) A partnership that is required to file a return under (a) of this section shall
31 withhold income tax from a nonresident partner's distributive share of the partnership's

1 items of income, gain, loss, or deduction derived from or connected with a source in
 2 the state at the highest marginal income tax rate applicable to individuals for the
 3 taxable year.

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

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

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

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

13 **Sec. 43.22.090. Permanent fund tax payment.** The department shall adopt
 14 regulations establishing procedures for an individual eligible for a dividend under
 15 AS 43.23.005 to direct the department to hold all or a part of the amount of the
 16 dividend to pay the tax due under this chapter. The amount held under this section
 17 may not exceed the dividend amount after contributions, garnishments, levies, fees,
 18 attachments, assignments, or other reductions or donations allowed under AS 43.23.
 19 The department shall apply the amount held under this section to tax owed in the
 20 taxable year in which the taxpayer applies for the dividend. The department shall
 21 refund the amount of the dividend not applied against taxes under this section to the
 22 individual who appears on the application for the dividend.

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

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

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

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

2 (b) A transaction or payment between related parties must have economic
3 substance, must serve a bona fide business purpose, and must not have occurred for
4 the primary purpose of lowering the tax due under this chapter. The department, upon
5 review or audit of a taxpayer's return, may determine whether there is sufficient
6 documentation or whether a transaction or payment meets the requirements of this
7 subsection. If the department determines that the documentation or the transaction or
8 payment fail to meet the requirements of this subsection, the department may adjust
9 the amount of a payment or transaction, disregard the payment or transaction, or make
10 another adjustment necessary for determining the tax under this chapter. If a payment
11 in an amount greater than \$500,000 is made, or is required to be made, from one party
12 to a related party, the parties shall submit documentation substantiating that the
13 amount of the payment is consistent with 26 U.S.C. 482 (Internal Revenue Code).
14 Payments subject to this subsection include payments for interest, royalties,
15 management fees, services, inventory, tangible personal property, intangible property,
16 and real property.

17 (c) A tax deficiency assessed by the department under this section is assumed
18 to be correct, and a taxpayer has the burden of proving that the tax deficiency is
19 erroneous.

20 (d) The department shall adjust the income bracket amounts in
21 AS 43.22.010(b) and (c) and the amount of the exemption under AS 43.22.030(b)
22 biennially for inflation from calendar year 2018 using the Consumer Price Index for
23 all urban consumers for Anchorage prepared by the Bureau of Labor Statistics, United
24 States Department of Labor. The department shall round amounts under this
25 subsection to the nearest \$100 and publish the adjusted amounts.

26 (e) The tax collected by the department under this chapter shall be deposited
27 into the general fund and accounted for separately. The legislature may appropriate the
28 estimated amounts separately accounted for under this subsection into the public
29 education fund established in AS 14.17.300. Nothing in this subsection creates a
30 dedicated fund.

31 **Sec. 43.22.100. References to Internal Revenue Code.** (a) Unless the

provision is inconsistent with this chapter or a regulation adopted under this chapter, the provisions of the Internal Revenue Code as now in effect or hereafter amended that are mentioned in this chapter are incorporated in this chapter by reference and have effect as though fully set out in this chapter.

(b) Sections 26 U.S.C. 6654, 6662, 6664, 6694, 6695, 6700 - 6702, 6707, 6713, 7201, 7202, 7206, 7207, 7216, 7407, and 7408 (Internal Revenue Code), as those sections read on January 1, 2017, are adopted by reference as a part of this chapter.

(c) When provisions of the Internal Revenue Code incorporated by reference as provided in (a) and (b) of this section refer to rules and regulations adopted by the United States Commissioner of Internal Revenue, or hereafter adopted, they are regarded as regulations adopted by the department under and in accordance with the provisions of this chapter, unless and until the department adopts specific regulations in their place conformable with this chapter.

Sec. 43.22.110. Information released to a banking institution. Notwithstanding AS 43.05.230, information on an individual income tax return may be released to a banking institution to verify the direct deposit of an income tax refund or correct an error in that deposit.

Sec. 43.22.150. Definitions. In this chapter,

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

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

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

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

(D) location of a bank account or active checking account of the individual;

(E) address where the individual receives mail;

(F) location of a school where the individual or a member of the individual's immediate family

(i) attends; or

(ii) receives resident tuition;

(G) location of an organization of which the individual is a member;

(H) location of a parent, child, grandchild, or great grandchild;

(I) location of dental and medical personnel that provide services to the individual on a regular or consistent basis;

(J) filing of a prior year tax return by the individual as a resident or nonresident;

(K) location where an individual is registered to vote;

(L) location where an individual holds a resident fishing, hunting, or trapping license;

(2) "federal adjusted gross income" has the meaning given to "adjusted gross income" in 26 U.S.C. 62;

(3) "fiduciary" means a guardian, trustee, executor, administrator, receiver, conservator, or a person, whether individual or corporate, acting in a similar position of special confidence toward another;

(4) "Internal Revenue Code" means the Internal Revenue Code of 1986 (26 U.S.C. 1 et seq.), as amended, and regulations issued thereunder, if the regulations are consistent with this chapter;

(5) "irrevocable trust" means a trust or portion of a trust that is not subject to a power to revest title in a person whose property constitutes the trust or a portion of the trust;

(6) "nonresident estate" means an estate other than a resident estate or part-year resident estate;

(7) "nonresident individual" means an individual who is not a resident of the state for any portion of the taxable year;

(8) "nonresident S corporation" means an S corporation whose place of

1 management and control is outside the state;

2 (9) "nonresident trust" means a trust other than a resident trust or a
3 part-year resident trust;

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

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

10 (12) "part-year resident estate" means an estate that is a resident of the
11 state for a portion of and not the entire taxable year;

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

14 (14) "part-year resident trust" means a trust that is a resident of the
15 state for a portion of and not the entire taxable year;

16 (15) "related parties" means any parties that satisfy the definition of a
17 related party in 26 U.S.C. 144, 147, or 267 (Internal Revenue Code);

18 (16) "resident estate" means the estate of a

19 (A) decedent who at the time of death was a resident of the
20 state, regardless of the residence of the fiduciary or beneficiary, if the
21 disposition or administration of the estate is, or will be, subject to state law; or

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

25 (17) "resident individual" means an individual who

26 (A) receives a permanent fund dividend under AS 43.23.005;

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

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

1 state;

2 (18) "resident S corporation" means an S corporation whose place of
3 management and control is in the state;

4 (19) "resident trust" means

5 (A) a trust, or a portion of a trust, consisting of property
6 transferred by will of a decedent who at the time of death was a resident of the
7 state if the disposition or administration of the property is, or will be, subject to
8 state law; or

9 (B) a trust consisting of the property of a person who was a
10 resident at the time the property was transferred to the trust and, at the time of
11 the transfer, the trust was

12 (i) an irrevocable trust;

13 (ii) a revocable trust and the trust has not later become
14 irrevocable;

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

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

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

22 (22) "taxable income" means income taxable under this chapter;

23 (23) "taxable year" means the calendar year or a fiscal year ending
24 during the calendar year;

25 (24) "taxpayer" means an individual, trust, or estate subject to a tax
26 imposed by this chapter.

27 * **Sec. 5.** AS 43.23 is amended by adding a new section to read:

28 **Sec. 43.23.092. Permanent fund dividend individual income tax payment.**

29 In accordance with AS 43.22.090, the department shall prepare the Alaska permanent
30 fund dividend application to allow an applicant to direct the department to hold all or
31 part of the amount of the individual's permanent fund dividend for application against

1 the individual income tax imposed under AS 43.22.

2 * **Sec. 6.** AS 43.05.085; AS 43.20.012(b), and 43.20.013 are repealed January 1, 2019.

3 * **Sec. 7.** The uncodified law of the State of Alaska is amended by adding a new section to
4 read:

5 APPLICABILITY. AS 43.22, added by sec. 4 of this Act, applies to income received
6 on or after the effective date of sec. 4 of this Act.

7 * **Sec. 8.** The uncodified law of the State of Alaska is amended by adding a new section to
8 read:

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