

## Income/Franchise:

### Alaska High Court Says Statute Requiring Inclusion of Foreign Affiliates on Return is Constitutional

*Case Nos. S-17883/17903, Alaska (8/5/22).* The Alaska Supreme Court (Court) partially reversed a lower court's decision, which had held that a state statute (*i.e.*, Alaska Statute section 43.20.145(a)(5), a corporate "tax haven" reporting statute) requiring an Alaska corporate income tax return to include certain foreign corporations affiliated with the taxpaying corporation is facially unconstitutional on certain Due Process grounds. Specifically, the Court held that the taxpayer presented no evidence of arbitrary enforcement and that the tax statute at issue may be interpreted through the adjudication process and thus the statute is *not* constitutionally void for vagueness by failing to provide notice of what affiliates must be included on the return. The Court also agreed with the lower court that this Alaska tax statute is otherwise facially constitutional under the Commerce and Due Process Clauses. The taxpayer had claimed that the Alaska tax statute at issue is facially unconstitutional for three reasons:

**URL:** <https://appellate-records.courts.alaska.gov/CMSPublic/Case/General?q=w6sobc/DATdMLepNAPBjLw==%27>

1. It violates the dormant Commerce Clause by discriminating against foreign commerce based on countries' corporate income tax rates;
2. It violates the Due Process Clause by being arbitrary and irrational; and
3. It violates the Due Process Clause by failing to provide notice of what affiliates a tax return must include, and therefore is void for vagueness (the lower court held for the taxpayer on this third issue, but the Court reversed).

The Court's opinion incorporates a lengthy Commerce Clause analysis, including citations to the *Complete Auto*, *Pike*, and *Kraft* cases, and ultimately concludes that the tax statute at issue does *not* facially discriminate against foreign commerce or have a discriminatory effect on foreign commerce, and the only potential burden placed on companies incorporated in "low-tax" or "no-tax" jurisdictions is having to file an Alaska tax return if they meet the statute's additional requirements. Accordingly, the taxpayer in this case had to include certain affiliated foreign corporations on its Alaska corporate income tax return. Please contact us with any questions.

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