BEFORE THE ALASKA OFFICE OF ADMINISTRATIVE HEARINGS

In the Matter of	)	
	)	
COSTCO WHOLESALE CORPORATION	)	OAH No. 16-0868/1325-TAX
	)	

DECISION ON MOTIONS FOR SUMMARY ADJUDICATION

I. Introduction

In filing its Alaska tax return, Costco Wholesale Corporation excluded from its apportionable income a dividend it had received from a subsidiary. The Alaska Department of Revenue added back 20 percent of the dividend, explaining that under the incorporated provisions of the Internal Revenue Code, only 80 percent of the dividend could be deducted from income. Costco appealed. Both parties filed motions for summary adjudication. Costco argued that the Department was misinterpreting the law. In its view, it was entitled to deduct 100 percent of the dividend.

The provision that Costco relies upon, however, was intended to avoid double taxation when both the subsidiary and the parent are included in a tax return. This concern does not apply here, because the subsidiary in question was not an Alaska taxpayer, nor included in Costco's Alaska return. Moreover, Costco's approach would result in differential treatment for subsidiaries based on whether the subsidiary was a domestic or a foreign corporation. The legislative history of the applicable statute, and the tenets of statutory construction, strongly favor equal treatment for corporations without regard to place of incorporation. Therefore, the Department's determination that only 80 percent of the dividend received may be deducted from Costco's income is affirmed.

II. Facts

This case involves a family of three corporations in the familiar Costco big-box-store chain. In the hierarchy of the three Costco companies involved, the one that sits at the lowest subsidiary tier is PriceCostco International, Inc. PriceCostco is a domestic corporation, incorporated in Nevada. It has both international and domestic business activity.

PriceCostco's parent is Costco Wholesale International, Inc. Costco International is also a domestic corporation because it, too, is incorporated in Nevada. Costco International, however, has very little activity (sales, payroll, or property) in the United States.

Costco International's parent (and thus, PriceCostco's grandparent) is Costco Wholesale Corporation. Costco Wholesale is a domestic corporation, incorporated in Washington State.

PriceCostco pays a dividend to its parent, Costco International. Costco International pays a dividend to its parent, Costco Wholesale. The dividend paid by Costco International to Costco Wholesale is the same amount as the dividend paid by PriceCostco to Costco International.

Costco Wholesale is an Alaska taxpayer. Alaska requires corporate taxpayers that have a subsidiary, or are a subsidiary of a parent company, to file returns on a "water's edge combined reporting method."[1] The statute uses the terms "affiliated corporation" and "affiliated group" to designate the status of having or being a subsidiary with 50 percent or more common ownership.[2] Because Costco Wholesale is a member of an affiliated group, the taxpaying group (called just "Costco" here) files a combined tax return in Alaska. The combined return, however, does not include all of Costco's subsidiaries. Because the statute limits the combined return to the water's edge of the United States, the combined return includes only those subsidiaries that have at least 20 percent of their business activity, as measured by their sales, property, and payroll, in the United States. [3]

Thus, the Alaska affiliated group includes PriceCostco, which has more than 20 percent domestic business activity. It does not, however, include Costco International, even though Costco International is a domestic company, because less than 20 percent of its business activity is in the United States.

When Costco filed its Alaska tax return for tax years 2012-2015, it deducted the dividends it had received from Costco International from its apportionable income. The Tax Division of the Alaska Department of Revenue, however, added back 20 percent of the dividends. Costco then appealed the addback to an informal conference, where it was affirmed. Costco appealed the addback to a formal hearing before the Office of Administrative Hearings. The parties agreed that the facts were not in dispute, and both parties filed motions for summary adjudication.[4] At oral argument, I asked the parties about the legislative history of the Alaska Net Income Tax Act's water's edge apportionment scheme, which was adopted in 1991. I also asked whether Costco's interpretation of the law, if upheld, could lead to discrimination against

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1 AS 43.20.145(a).

2 *Id.*; AS 43.20.145(h)(1)-(2).

3 AS 43.20.145(a)(1)(A).

4 Summary adjudication in an administrative decision, like summary judgment in a judicial decision, is appropriate when no material facts are in dispute and the moving party is entitled to a decision in its favor as a matter of law. *See, e.g., In re ConocoPhillips Alaska, Inc.*, OAH No. 09-0140-TAX at 3 (Office of Admin. Hr'gs 2012).

foreign commerce. The parties were given an opportunity to brief these questions, which they did. The record closed on April 11, 2017.

III. Discussion

The issue in this case involves the building blocks of a taxpayer's apportionable income—the income that the taxpayer must report to Alaska under the Alaska Net Income Tax Act. Only a fraction of that income is actually taxed by Alaska. The taxable portion is determined by multiplying total apportionable income by a fraction calculated by dividing the taxpayer's unitary business activities in Alaska by its reportable business activities everywhere. A taxpayer's business activity is measured by "factors"—in this case, its property, payroll, and sales.[5]

Before 1991, Alaska's formula for determining reportable income and activities was based on a taxpayer's worldwide income and activity. In 1991, however, except for corporations engaged in oil and gas production or transportation, the legislature adopted a new approach that was based on the unitary business's "water's edge" income and activity. Under this approach, a unitary business's subsidiary or parent corporation's income and activity is included in the combined Alaska tax report only if that "corporation's property, payroll, and sales factors in the United States average 20 percent or more."[6]

The water's edge statute recognizes that a subsidiary corporation will typically pay a dividend to a parent corporation. The problem of how to avoid double taxation for a subsidiary that is in the combined return, and whose dividend payment to the parent is also in the combined return, is dealt with by incorporating provisions from the federal tax code called the "dividend-received deduction," which allows 100 percent of the dividend to be deducted from income. The statute also specifically addresses one case of a dividend paid where double taxation would not be an issue—a dividend paid by a foreign subsidiary corporation that is excluded from the water's edge return. The statute permits a taxpayer to exclude "80 percent of dividend income received from foreign corporations."[7] The statute does not, however, address dividends received from a domestic subsidiary corporation that, like Costco International, are excluded from the combined report because its business activity is mostly outside the United States.

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5 AS 43.20.142; AS 43.19.

6 AS 43.20.145(a)(1)(A) (1991) (subparagraph designation (A) omitted). The statute was renumbered in 2012.

7 AS 43.20.145(b)(1).

In Costco's view, the absence of any statute directly addressing dividends paid by an excluded domestic affiliated corporation means that the taxpayer is eligible for a 100 percent dividend-received deduction. The Department, however, argues that dividends received from a domestic subsidiary not included in the water's edge tax return should be treated the same as dividends received from a foreign subsidiary not included in the return: in both cases, 20 percent of the dividend should be included in apportionable income.

The parties agree that the outcome of this case is controlled by federal law. They disagree, however, about which subsection of federal law applies. Before describing the parties' interpretations and arguments in more depth, I must first explain how it is that federal law controls the outcome of this state-law dispute. Then I will turn to other factors that affect the analysis, including relevant cases, the purpose of the dividend-received deduction, the legislative history of the water's edge statute, and the tenets of statutory construction.

A. The laws governing the dividend-received deduction

1. The incorporation of portions of the Internal Revenue Code, and the exceptions to portions of the code.

The starting point for Alaska's income tax is a taxpayer's federal tax return. In accordance with this approach, for many aspects of making a return and computing the tax due, Alaska does not enact its own laws. Instead, the Alaska Net Income Tax Act, under AS 43.20.021 and 43.20.300, incorporates many sections of the Internal Revenue Code (IRC).[8]

In many cases, the application of the IRC to Alaska is a straightforward, word-for-word application of the law. In some cases, however, the federal provisions are not a neat fit. For some of these less tidy applications, figuring out how the incorporation works in practice is often a matter of determining how Alaska's procedure "would be classified" under the federal

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8 *See* AS 43.20.021(a) ("(a) Sections 26 U.S.C. 1 - 1399 and 6001 - 7872 (Internal Revenue Code), as amended, are adopted by reference as a part of this chapter. These portions of the Internal Revenue Code have full force and effect under this chapter unless excepted to or modified by other provisions of this chapter."); AS 43.20.300(a) ("The provisions of the Internal Revenue Code as now in effect or hereafter amended mentioned in this chapter are incorporated in this chapter by reference and have effect as though fully set out in this chapter."). Section 300 also addresses the Treasury Regulations that Implement the IRC:

> (b) When portions of the Internal Revenue Code incorporated by reference as provided in (a) 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 accord with the provisions of this chapter, unless and until the department adopts specific regulations in place of them conformable with this chapter.

AS 43.20.300(b).

scheme.[9] In these situations, the Alaska Supreme Court has explained that application of the incorporated federal statutes requires "look[ing] at the context" of the incorporated material.[10]

For some situations, however, no amount of interpreting the provision in context will make the nominally-incorporated provision of the IRC work with the Alaska tax scheme. The Alaska Net Income Tax Act anticipates that not all of the incorporated sections of the IRC will be applicable. It instructs the Department to not apply those provisions of the IRC that have been "excepted to or modified by other provisions of this chapter."[11]

An exception to a nominally-incorporated provision of the IRC does not have to be explicit. In *State, Dep't of Revenue v. OSG Bulk Ships, Inc.,* for example, the court determined that the Alaska tax scheme implicitly excepted to incorporation of the section of the IRC that provides reciprocal exemptions to tax for foreign-flagged vessels.[12] The source of the implicit exception was that Alaska law uses a different approach for determining the taxability of foreign income than federal law. In addition, Alaska includes a special formula for apportioning vessel income, so the reciprocal exemption would not serve the purpose it serves in federal law.[13] These provisions of the Alaska scheme made the nominally-incorporated provisions of the IRC unnecessary, and thus, excepted to.[14]

More recently, and more directly related to this case, in the 2014 case *Schlumberger Technology Corporation v. State, Dep't of Revenue,* the court addressed the incorporation of a section of the IRC that sources foreign income, IRC § 882.[15] Under section 882, foreign income is taxed only if "effectively connected" with the United States. The taxpayer argued that the incorporation of this provision by AS 43.20.021(a) meant that the taxation of 20 percent of

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9 *Wien Air Alaska, Inc. v. Dep't of Rev., State of Alaska,* 647 P.2d 1087, 1096 (Alaska 1982). In *Wien*, the Alaska Supreme Court had to apply incorporated federal law regarding revenue rulings, information letters, and closing letters to a letter of advice given by the Alaska Department of Revenue to an Alaska taxpayer. *Id.* at 1092-96. The Department's processes did not match up precisely with the federal processes. After determining how the Department's advice letter would be classified under federal law, the court applied the appropriate federal law under that classification to determine whether the Department's advice was binding. *Id.* at 1096-97.

10 *Louisiana-Pacific Corp. v. State, Dep't of Rev.*, 26 P.3d 422, 428 (Alaska 2001). *Louisiana-Pacific* clarified that the incorporation of the IRC under AS 43.20.021(a) does not allow for a blanket rule of substitution of state terms or processes for federal terms or processes, because that could lead to inefficient and burdensome results. *Id.*

11 AS 43.20.021(a).

12 961 P.2d 399, 402-06 (Alaska 1998). *See also Gulf Oil Corp. v. State, Dep't of Rev.*, 755 P.2d 372, 380 (Alaska 1988) (holding that treasury statutes and regulations regarding foreign tax credit contrary to Alaska tax scheme and tax policy are not incorporated into Alaska law).

13 *Id.* at 404-06.

14 *Id.*

15 331 P.3d 334, 338-39 (Alaska 2014).

foreign dividends under AS 43.20.145(b)(1) was inoperable.[16] The court rejected that argument, finding that the adoption of AS 43.20.145(b)(1), as well as the Alaska code's apportionment scheme, established exceptions to the incorporation of the sourcing rules for foreign income found in IRC § 882.[17]

Here, the dividend received from a domestic subsidiary not included in Costco's water's edge return is not addressed by Alaska law or *Schlumberger*. To fill this gap, the parties turn to one of the provisions of the IRC incorporated by AS 43.20.021(a), IRC § 243.[18] We must therefore analyze IRC § 243 to determine how to treat Costco International's dividend.

2. The incorporation of IRC § 243.

Under IRC § 243(a)(3), a taxpayer may exclude 100 percent of a dividend-received from a corporation that is a member of the taxpayer's affiliated group.[19] Under IRC § 243(c),

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16 *Id.*

17 *Id.*

18 Costco agrees that intercompany dividend elimination under 26 C.F.R. § 1.1502-13 does not apply because that provision only applies when the related companies are included in the consolidated return, which is not the case here.

19 IRC § 243(a) and (b) provide as follows:

> **(a) General rule.** In the case of a corporation, there shall be allowed as a deduction an amount equal to the following percentages of the amount received as dividends from a domestic corporation which is subject to taxation under this chapter:
> (1) 70 percent, in the case of dividends other than dividends described in paragraph (2) or (3);
> (2) 100 percent, in the case of dividends received by a small business investment company operating under the Small Business Investment Act of 1958 (15 U.S.C. 661 and following); and
> (3) 100 percent, in the case of qualifying dividends (as defined in subsection (b)(1)).
> **(b) Qualifying dividends.**
> **(1) In general.** For purposes of this section, the term "qualifying dividend" means any dividend-received by a corporation—
> (A) if at the close of the day on which such dividend is received, such corporation is a member of the same affiliated group as the corporation distributing such dividend, and
> (B) if—(i) such dividend is distributed out of the earnings and profits of a taxable year of the distributing corporation which ends after December 31, 1963, for which an election under section 1562 was not in effect, and on each day of which the distributing corporation and the corporation receiving the dividend were members of such affiliated group, or (ii) such dividend is paid by a corporation with respect to which an election under section 936 is in effect for the taxable year in which such dividend is paid.
> **(2) Affiliated group.** For purposes of this subsection:
> (A) In general. The term "affiliated group" has the meaning given such term by section 1504(a), except that for such purposes sections 1504(b)(2), 1504(b)(4), and 1504(c) shall not apply.
> (B) Group must be consistent in foreign tax treatment. The requirements of paragraph (1)(A) shall not be treated as being met with respect to any dividend-received by a corporation if, for any taxable year which includes the day on which such dividend is received— (i) 1 or more members of the affiliated group referred to in paragraph (1)(A) choose to any extent to take the benefits of section 901, and (ii) 1 or more other members of such group claim to any extent a deduction for taxes otherwise creditable under section 901.

however, if the payor corporation is not in the affiliated group, and is at least 20 percent owned by the taxpayer, only 80 percent of the dividend is eliminated.[20] Costco argues that § 243(a)(3) controls the outcome of this case. The Department argues that § 243(c) controls.

The question here is simple: Is Costco International a member of Costco Wholesale's affiliated group for purposes of IRC § 243? If yes, then under IRC § 243(a)(3), 100 percent of the dividend-received from Costco International is deducted from Costco's apportionable income. If no, then under IRC § 243(c), only 80 percent of the dividend received from Costco International is deducted from Costco's apportionable income.

Although the question is simple, the answer is not. The parties do not agree about which definition of affiliated group applies. Each has arguments for why some sections of federal law were incorporated and why some were excepted to. Each asserts alternative arguments. Each claims that its interpretation is the best, regardless of whether state law or federal law applies.

B. The parties' arguments

1. Costco's interpretation of federal law governing the dividend-received deduction.

Under federal law, the term "affiliated group" is defined by IRC § 1504(a).[21] Costco's primary argument is that under this federal definition, incorporated into Alaska law, Costco Wholesale and Costco International are in an affiliated group. Although the federal law includes clauses and subclauses, the primary test is whether the subsidiary is 80 percent owned and not a

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20 IRC § 243(c) provides:

> **(c) Retention of 80-percent dividends received deduction for dividends from 20-percent owned corporations. (1) In general.** In the case of any dividend-received from a 20-percent owned corporation—(A) subsection (a)(1) of this section, and (B) subsections (a)(3) and (b)(2) of section 244, shall be applied by substituting "80 percent" for "70 percent". **(2) 20-percent owned corporation.** For purposes of this section, the term "20-percent owned corporation" means any corporation if 20 percent or more of the stock of such corporation (by vote and value) is owned by the taxpayer. For purposes of the preceding sentence, stock described in section 1504(a)(4) shall not be taken into account.

21 IRC § 1504(a) provides:

> **(a) Affiliated group defined.** For purposes of this subtitle—**(1) In general.** The term "affiliated group" means—(A) 1 or more chains of includible corporations connected through stock ownership with a common parent corporation which is an includible corporation, but only if—(B)(i) the common parent owns directly stock meeting the requirements of paragraph (2) in at least 1 of the other includible corporations, and (ii) stock meeting the requirements of paragraph (2) in each of the includible corporations (except the common parent) is owned directly by 1 or more of the other includible corporations. **(2) 80-percent voting and value test.** The ownership of stock of any corporation meets the requirements of this paragraph if it—(A) possesses at least 80 percent of the total voting power of the stock of such corporation, and (B) has a value equal to at least 80 percent of the total value of the stock of such corporation.

foreign corporation.[22] Because the two corporations meet these requirements, Costco concludes that IRC § 243(a)(3) applies, and that it should be able to deduct 100 percent of the dividend Costco Wholesale received from Costco International. Thus, Costco urges a straightforward application of incorporated federal provisions, without finding any exceptions or modifications to the dividend-received deduction or the definition of affiliated group.

2. Costco's alternative interpretation, based on state law governing the dividend-received deduction.

Costco argues in the alternative that if the federal definition of affiliated group was excepted to by Alaska law, then, even under the state law definition of "affiliated group," Costco International would still be a member of Costco's state affiliated group. Paragraph 145(h)(2) of the water's edge statute defines "affiliated group" to mean "a group of two or more corporations in which 50 percent or more of the voting stock of each member of the group is directly or indirectly owned by one or more corporate or noncorporate common owners, or by one or more of the members of the group."[23] Because Costco International is more than 50 percent owned by its parent, Costco Wholesale, Costco argues that the two companies are necessarily in the same state affiliated group. Therefore, substituting the state definition of affiliated group from Paragraph 145(h)(2) for the definition in IRC § 1504(a), Costco may still deduct 100 percent of its dividend from Costco International.

3. The Department's interpretation of state law governing the dividend-received deduction.

The Department has two arguments in response. First, in the Informal Conference Decision, and in its opening brief, the Department viewed this issue as one of state law. It notes

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22 The exclusion of foreign and Subchapter S corporations from the affiliated group is found in IRC § 1504(b):

> **(b) Definition of "includible corporation"**
> As used in this chapter, the term "includible corporation" means any corporation except—
> (1) Corporations exempt from taxation under section 501.
> (2) Insurance companies subject to taxation under section 801.
> (3) Foreign corporations.
> (4) Corporations with respect to which an election under section 936 (relating to possession tax credit) is in effect for the taxable year.
> [(5) Repealed. Pub. L. 94–455, title X, §1053(d)(2), Oct. 4, 1976, 90 Stat. 1649.]
> (6) Regulated investment companies and real estate investment trusts subject to tax under subchapter M of chapter 1.
> (7) A DISC (as defined in section 992(a)(1)).
> (8) An S corporation.

Recall, however that under IRC § 243(b)(2), certain of these subsections do not apply: "The term "affiliated group" has the meaning given such term by section 1504(a), except that for such purposes sections 1504(b)(2), 1504(b)(4), and 1504(c) shall not apply."

23 AS 43.20.145(h)(2).

that under AS 43.20.145(a), Costco International is not included in Costco's Alaska combined report. In the Department's view, the definition of affiliated group in AS 43.20.145(h)(2) only tells part of the story. Thus, the Department concludes, the true affiliated group for state law purposes of applying the incorporated federal statute, IRC § 243, is actually the corporations that are included in the combined report. That group of corporations is described in AS 43.20.145(a), and does not include Costco International. The Informal Conference Decision explained that this view is based more on common sense than the text of the statute, noting that for determining the tax due, the statutes and regulations focus on "the corporations required to join in the return."[24]

4. The Department's alternative interpretation, based on federal law governing the dividend-received deduction.

At oral argument, and in a supplemental brief after oral argument, the Department raised an alternative argument that provided a textual basis for its conclusion that IRC § 243(c) applies. Under this argument, the Department would agree with Costco that the federal definition of affiliated group controls the outcome here. The Department, however, strongly disagrees with Costco about how to apply the federal definition of the term affiliated group. Instead, the Department notes that the federal definition starts by limiting the affiliated group to "1 or more chains of includible corporations connected through stock ownership with a common parent corporation which is an includible corporation."[25] Without regard to the percentage of ownership necessary to be in the affiliated group, the Department asserts that the true focus of the definition is on being an "includible corporation." In the context of state law, the Department contends, the term "includible corporation" means, in fact, all of the corporations included in the combined report. Because Costco International is not in the combined report, it is not in the affiliated group, and, hence, its dividends are governed by IRC § 243(c), not IRC § 243(a)(3).

Although none of these arguments is compelling, Costco's argument based on state law is the most simple, and the closest to a "plain language" approach. Given the cases of the Alaska Supreme Court that have found exceptions to the incorporation of the IRC when a subsection of the Alaska Net Income Tax Act defines a term used in a federal law, Costco could reasonably argue that all we need to do is substitute the state law definition for the federal term. The Department's argument, on the other hand, recognizes that the definition of "affiliated group" in AS 43.20.145(h)(2) may not necessarily apply in the context of IRC § 243.

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[24] Exhibit II to Costco Wholesale Corporation's Request for Formal Hearing (July 12, 2016) at 4 (Letter to Joe A. Moore from Hollie A. Kovach (June 28, 2016)).

[25] IRC § 1504(a).

Choosing among these alternative interpretations is a matter to which I must apply my independent judgment.[26] The Alaska Supreme Court has advised that decision-makers should "interpret [a] statute according to reason, practicality, and common sense, considering the meaning of the statute's language, its legislative history, and its purpose."[27] Construing the statutory incorporation of the IRC in this case will require exploration of the purpose of the statutes involved, including the definitions of affiliated group, and the 100 percent and 80 percent dividend-received deductions. It also requires inquiry into the legislative intent in adopting the water's edge statute, and the tenets of statutory construction.

C. What is the purpose of the definition of affiliated group in AS 43.20.143(h)(2)?

Costco has made a logical argument based on applying a state law definition of affiliated group instead of a federal law definition. The Department has countered that the definition in AS 43.20.145(h)(2) is not adequate or appropriate when used for an entirely different purpose than the purpose of the Paragraph (h)(2). Analysis of these arguments involves an explication of the purpose of Paragraph (h)(2).

1. Why does the process start with the worldwide group?

The definition of "affiliated group" in AS 43.20.145(h)(2) identifies a group of corporations that serve as the starting point for building the Alaska return. The starting point defined in paragraph (h)(2), however, is the *worldwide* group of affiliated corporations. paragraph (h)(2) merely identifies the degree of common ownership needed to belong to the worldwide group. That group is then narrowed by AS 43.20.145(a) to the water's edge group that must file a combined return, and whose income and factors are used to determine the tax due. The obvious question is to ask why the legislature chose to start with the worldwide group, rather than simply designating the water's edge group as the affiliated group.

Facially, this process is not illogical—the affiliated group is a set of taxable corporations, and the combined-report group defines a subset of corporations whose income and factors are included in the return. With regard to whether the legislative history addresses this issue, the legislative history of the water's edge statute will be explored in considerable detail later in this decision. For the purposes of this inquiry, it is sufficient to note that history does not reveal precisely why the legislation started with the broad worldwide group, and then narrowed the group to the water's edge group (as opposed to just calling the water's edge group the affiliated

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26 *See, e.g., Schlumberger,* 331 P.3d at 337 (noting that whether a particular IRC provision is excepted to or modified by Alaska law is a matter of pure statutory construction reviewed on appeal using independent judgment).

27 *Anderson v. Alyeska Pipeline Serv. Co.,* 234 P.3d 1282, 1286 (Alaska 2010).

group). The most relevant aspect of the legislative history is that it does indicate concern that some taxpayers might shelter income and escape taxation. The solution to this concern would be to force a worldwide return.[28] An advantage of defining affiliated group broadly may have been that it connects the Department's ability to force a noncompliant taxpayer to file a worldwide combined return with the approach of starting the process with the worldwide group.[29] In sum, although we may not know why the legislature defined affiliated group broadly in AS 43.20.145(h)(2), the important takeaway from the legislative history is that nothing suggests that beginning the process with the worldwide group was designed to affect the dividend-received deduction in IRC § 143.

2. The purpose of the water's edge return described in *Schlumberger.*

The holding in *Schlumberger* supports the conclusion that the definition of affiliated group in AS 43.20.145(h)(2) was not intended to affect the dividend-received deduction. In *Schlumberger,* in addition to arguing that its foreign dividend income should be excluded under IRC § 882, the taxpayer also argued that the income of its affiliated foreign corporation was not subject to inclusion in the Alaska return because including foreign income would conflict with the water's edge mandate of AS 43.20.145(a).[30] *Schlumberger* rejected this argument. The court explained that the purpose of AS 43.20.145(a) was to "limit[] the corporations that must be joined in a return."[31] This subsection "does not limit the types of income that must be reported."[32]

Applying this reasoning here, the definition of the term "affiliated group" in AS 43.20.145(h)(2) is also for the purpose of limiting the corporations that must be joined in the return. This definition tells us that if a taxpayer owns at least fifty percent of a subsidiary, or is owned at least fifty percent by a parent, the taxpayer must file a return under the water's edge combined reporting method.[33] As *Schlumberger* explains, the process of identifying who is eligible for a water's edge return tells us nothing about how to treat the dividend income of an

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28 Department Exhibit 3 at 10 (testimony of Susan Burke regarding a predecessor bill acknowledging "concern by staff at the Dept. of Revenue that implementation of the water's edge method of taxation will make it easier for corporations to hide income" and noting in response "provisions within the bill which allow the department to force a corporation to file a worldwide combined report"). As will be seen, Ms. Burke, a lobbyist, was a primary proponent, and likely the author, of the bill that became law.

29 AS 43.20.145(e). Given that the affiliated group starts with the worldwide combination, it makes forcing a worldwide combination more consistent with the statute.

30 331 P.3d. at 336.

31 *Id.* at 340.

32 *Id.*

33 A taxpayer that did not have fifty percent or more ownership by a parent or of its subsidiaries, on the other hand, would simply allocate and apportion all income under the Multistate Tax Compact. AS 43.20.142.

affiliated corporation that is excluded from the combined report. Thus, *Schlumberger* supports the Department's view that the limited definition of affiliated group in Paragraph 145(h)(2) was not intended to apply to or affect the dividend-received deduction in IRC § 243.

D. What is the purpose of the dividend-received deduction?

Determining how the incorporation of IRC § 243 works in practice requires inquiry into the purposes of the two alternatives—the 100 percent deduction and the 80 percent deduction.[34] Once the purpose of each of these subsections is identified, we can see which purpose is a better fit with the Alaska tax scheme.

1. The purpose of the 100 percent dividend-received deduction.

The United States Supreme Court has explained the purpose of the 100 percent dividend-received deduction as follows: "this deduction avoids a second federal tax" on the earnings of a subsidiary.[35] The same purpose is found in the intercompany dividend elimination provisions of Treasury Regulation § 1.1502-13. At oral argument, Costco agreed that the purpose of the 100 percent dividend-received deduction was to avoid double taxation.

A dividend received from a corporation that is not a taxpayer or included in the combined report, however, would not be susceptible to double taxation by the state. Therefore, allowing Costco to deduct 100 percent of the dividends it received from Costco International would not advance the purpose of the100 percent dividend-received deduction.[36] Thus, the purpose of the 100 percent dividend-received deduction does not provide support for Costco's interpretation of how IRC § 243 is incorporated by AS 43.20.021(a).

3. The purpose of the 80 percent dividend-received deduction.

The parties were not able to articulate the purpose of including 20 percent of the dividends received from a source that is clearly part of the overall business, but not includible in the business's return. In Costco's view, the 20 percent dividend inclusion is simply arbitrary.

The legislative history of the water's edge statute, however, provides considerable evidence of the purpose of including 20 percent of the dividends received from foreign corporations. The legislative history is fairly complex, spanning over two sessions. Therefore,

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[34] *Cf., e.g., OSG,* 961 P.2d at 404-05 (analyzing "purpose served by the MTC through the apportionment fraction" in order to determine scope of incorporation of IRC under AS 43.20.021(a)).

[35] *Kraft Gen. Foods, Inc. v. Iowa Dep't of Rev. and Fin.,* 505 U.S. 71, 73 (1992). The quote addresses only domestic subsidiaries because foreign subsidiaries are not includible in the federal return.

[36] Costco affirmed at oral argument that it was not arguing that inclusion of PriceCostco's income in the combined return was a ground for deduction of 100 percent of the dividend. It also did not argue that Costco International was effectively a pass-through corporation.

before continuing the analysis of the purpose of 80 percent deduction, that history will be set out in some detail.

a. The legislative history of the water's edge statute.

The water's edge method was first considered by the 16th legislature when Governor Cowper introduced SB 119 in 1989. As originally drafted, SB 119 allowed water's edge filing only by "an affiliated group whose common parent is a corporation incorporated outside the United States."[37] The primary purpose of the bill was to encourage additional investment in Alaska by domestic subsidiaries of foreign corporations.[38] The original draft, however, omitted domestic parents that had foreign subsidiaries from the water's edge methodology. In the Department's view, including domestic parents would reduce state revenues beyond an acceptable limit.[39] The original water's edge proposal did not address any aspect of the dividend-received deduction.

The proposed legislation was criticized because domestic parent corporations with foreign subsidiaries would still have to file on a worldwide basis.[40] On April 10, 1990, the Senate Finance Committee adopted a committee substitute for SB 119.[41] The committee substitute was based on a proposal prepared by a lobbyist for IBM, Susan Burke.[42] This committee substitute expanded the water's edge methodology to include both foreign and domestic multinational companies that did not have at least 20 percent domestic business activity. The committee substitute included subsection (b)(1), in the same form that is present in the statute eventually adopted (and is now AS 43.20.145(b)(1)), providing for the 80 percent dividend-received deduction for foreign dividends. The committee substitute passed the senate, but did not pass the house during the 16th legislative session.

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37 SB 119 (Introduced January 17, 1989) *available at*: http://www.akleg.gov/library/waters%20edge/1989-1990%20SB119/1989-1990%20SB119%20SITT%20Bill%20File.pdf. A companion bill in the house did not receive any hearings in the House Finance Committee. *See House Journal* (1989) at 158-59.

38 *Senate Journal* (1989) at 128 Letter from Gov. Steve Cowper to Senator Tim Kelly (transmitting SB 119) (Jan. 17, 1989).

39 Department Exhibit 3 at 14 (testimony of Steve Kettel, Director, Income and Excise Tax Division, Dep't of Revenue.).

40 Department Exhibit 3 at 7 (Minutes, Senate Finance Committee, March 1, 1990).

41 Alaska State Legislature, *Alaska Senate Bill History, 1989-90,* SB 119 (1991) at 68; CSSB 119 *available at*: http://www.akleg.gov/library/waters%20edge/1989-1990%20SB119/1989-1990%20SB119%20Finance%20Bill%20File.pdf.

42 *Compare* CSSB 119 *with* document dated 4/21/89 called "I.B.M. Amendment submitted by Susan Burke," *available at*: http://www.akleg.gov/library/waters%20edge/1989-1990%20SB119/1989-1990%20SB119%20Finance%20Bill%20File.pdf. *See also* Minutes, Senate Int'l Trade and Tourism Committee (Jan. 25, 1989) at 4 *available at*: http://www.akleg.gov/library/waters%20edge/1989-1990%20SB119/1989-1990%20SB119%20SITT%20Minutes.pdf (testimony of Susan Burke that IBM has drafted substitute bill to include domestic parents with foreign subsidiaries in water's edge apportionment).

The senate finance committee substitute, CSSB 119 (Fin) became the template for the version of the water's edge legislation, HB 12, that was introduced in the next session and eventually adopted.[43] The language of HB 12 was identical to that of the finance committee substitute for SB 119 from the prior session, although the organization of some of the subsections was changed.[44] With no material changes, the legislature passed HB 12 and the governor signed it. Therefore, the testimony and history regarding CSSB 119 is applicable to the current AS 43.20.145, even though CSSB 119 was not the vehicle that eventually became law.

a. The explanation for the 80 percent dividend-received deduction in the legislative history.

With regard to the purpose of the 80 percent dividend-received deduction, the testimony regarding CSSB 119 explained that "[t]he percentage was set at 80% rather than 100% because certain expenses incurred by a domestic multinational parent are dedicated to support of income producing activities of the foreign parent."[45] The add-back of 20 percent of foreign dividends was explained in greater depth in a memorandum prepared by Ms. Burke:

> Foreign dividends and royalties are in actuality nothing more than income earned outside the United States that happens to be returned to the domestic parent in the form of dividends or royalties. Since the purpose of a water's edge method is to tax a corporation based only on income derived from its United States operations, foreign income in the form of dividends and royalties must be excluded. At the same time, a certain amount of the total expenses that a domestic parent incurs inevitably go towards supporting the income producing activities of its foreign subsidiaries. The expenses attributable to foreign operations should not be deductible from income that is earned within the United States. For that reason, the proposed CS provides that 20 percent of the dividend and royalty income received from a foreign corporation will remain taxable. The actual expenses of a particular corporation in a given year may, of course, be greater or less than 20 percent of its foreign dividend and royalty income. However, it would be extremely difficult for the Department of Revenue to determine precisely which expenses of a corporation are actually attributable to foreign operations. The simplest way to deal with the concern that expenses related to foreign operations will be deductible from domestic income is simply to require corporations

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43 *See* Department's Exhibit 4 at 16 (Minutes, Senate Finance Committee, May 19, 1991) (testimony of Representative Tom Moyer that "a similar version of the proposed bill passed the Senate last year").

44 *See* HB 12 (1991) *available at:* http://www.akleg.gov/library/waters%20edge/1991-1992%20HB12/HB0012A.pdf.

45 Department's Exhibit 3 at 10 (Minutes, Senate Finance Committee, March 1, 1990) (testimony of Susan Burke, representing IBM). It appears that the phrase "foreign parent" should be "foreign subsidiary."

> to include each year a fixed percentage of their foreign dividends and royalties as taxable income.[46]

The reasoning in this memorandum would apply with equal force to a domestic subsidiary that had only foreign income, such as Costco International—it too, would have "expenses attributable to foreign operations" that "should not be deductible from income that is earned within the United States." Therefore, incorporating the 80 percent dividend-received deduction for a domestic subsidiary corporation not included in the combined report would be consistent with the legislative intent.[47]

E. In adopting the 80 percent dividend-received deduction in AS 43.20.145(b)(1), did the legislature intend to tax foreign corporations differently than it taxed similarly-situated domestic corporations?

As explained above, Costco's approach to the incorporation of IRC § 243 requires us to accept that in adopting the water's edge statute, the legislature intended to apportion 20 percent of a dividend paid by an excluded foreign subsidiary while apportioning zero percent of a dividend paid by an excluded domestic corporation. Both *Schlumberger* and the legislative history of the water's edge statute provide guidance on whether Costco's approach is consistent with the intent of the legislature.

1. The presumptions regarding legislative intent.

In rejecting the taxpayer's claim that the water's edge limitation in AS 43.20.145(a) meant that the legislature intended that no foreign income could be taxed in Alaska, *Schlumberger* relied extensively on AS 43.20.145(b)(1)'s inclusion of 20 percent of dividends

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46 Susan Burke, *Synopsis of CSSB 119 (Finance)* at 2-3 (March 1, 1990) (memorandum in the Senate Finance Committee bill file) *available at:* http://www.akleg.gov/library/waters%20edge/ 1989-1990%20SB119/1989-1990%20SB119%20Finance%20Bill%20File.pdf. The explanation in this memorandum is consistent with the flow of value that we know takes place between unitary companies. For an explanation of the concept of unitary business and the flow of value, see, for example, *Container Corp. of America v. Franchise Tax Board,* 463 U.S. 159, 178 (1983).

47 Another colloquy regarding the 80 percent dividend-received deduction for foreign corporations occurred in the House Labor and Commerce Committee regarding HB 12, when Representative Finkelstein raised a question about "the 80/20 split on dividends." Ms. Burke explained, "[t]here was a concern that domestic multinational firms (including IBM) be treated fairly, and the 80/20 split on dividends was the way to insure domestic firms were not at a disadvantage, and received evenhanded treatment." Minutes, House Labor and Commerce Committee (March 12, 1991) at 6, *available at*: http://www.akleg.gov/library/waters%20edge/1991-1992%20HB12/1991-1992%20HB12%20HL&C%20Minutes.pdf. As will be discussed in detail in the next session, the concern for fairness and equal treatment for domestic and foreign corporations was the prime motivation behind the committee substitute for SB 119. That the purpose of the 80 percent dividend-received deduction in AS 43.20.145(b)(1) was itself a further example of seeking fair treatment lends support for the Department's argument that the "affiliated group" referred to in IRC § 243(b)(1) is the combined-report group defined in AS 43.20.145(a), not the affiliated group defined in AS 43.20.145(h)(2).

paid by a foreign corporation excluded from the combined report.[48] *Schlumberger* concluded that "[i]t thus seems unlikely that the legislature intended the water's edge amendment to have the effect of excluding all dividend income received by a foreign corporation."[49]

Applying this reasoning here, it seems equally unlikely that the legislature would have intended to exclude the income of a *domestic* corporation that had only foreign income. For Alaska purposes, the domestic corporation with 80 percent or more foreign business activity is comparable in all material ways to the foreign corporation with 80 percent or more foreign business activity. In the absence of evidence that the legislature intended to treat these two entities differently, the best approach would be to favor an outcome that treats these similarly-situated companies identically.

Indeed, favoring a construction of the statute that treats foreign and domestic commerce the same is particularly apt because differential treatment would have the effect of discriminating against foreign commerce in favor of domestic commerce. Under the United States Constitution, a state may not impose a taxing scheme that favors domestic commerce over foreign commerce.[50] The Alaska Supreme Court has frequently relied on "the well-established rule of statutory construction that courts should if possible construe statutes so as to avoid the danger of unconstitutionality."[51] This rule "recognizes that the legislature, like the courts, is pledged to support the state and federal constitutions and that the courts, therefore, should presume that the legislature sought to act within constitutional limits."[52] Applying the presumption that the legislature sought to act within constitutional limits here means that the legislature intended the incorporation of IRC § 243(c) to apply to a domestic corporation included in the taxpayer's unitary business that was not includible in the Alaska combined water's edge return. That result would provide for equal treatment among domestic and foreign corporations not included in the combined return, and avoid a violation of the foreign commerce clause of the United States Constitution.[53]

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48 331 P.3d at 340.

49 *Id.*

50 *See, e.g., Kraft*, 505 U.S. at 76-81 (finding unconstitutional Iowa taxation of dividends from foreign subsidiaries while exempting dividends from domestic subsidiaries because a "State's preference for domestic commerce over foreign commerce is inconsistent with the Commerce Clause").

51 *State, Dep't of Rev. v. Andrade*, 23 P.3d 58, 71 (Alaska 2001) (quoting *Kimoktoak v. State*, 584 P.2d 25, 31 (Alaska 1978) (footnote and citations omitted by *Andrade*)).

52 *Id.*

53 U.S. Const., Art. I § 8 (reserving to Congress the power to "regulate commerce with foreign nations").

Moreover, the issue under discussion here was anticipated by the court in *Schlumberger*. One of the arguments raised by the taxpayer in *Schlumberger* was that the 80 percent dividend-received deduction for foreign subsidiaries violated the United States Constitution because it discriminated against foreign commerce.[54] The basis for this assertion was the taxpayer's understanding that a domestic subsidiary excluded from the combined report would be entitled to a 100 percent dividend-received deduction. Because the taxpayer had waived the issue, the court did not address it.[55] The court noted, however, that the State had made a claim that "given the opportunity, it could make a factual record that [the Alaska Net Income Tax Act] contains sufficient 'taxing symmetry' to satisfy the federal constitution."[56] Thus, although this statement by the court is not a holding, it is guidance that the court will be looking for "taxing symmetry." Here, the Department's interpretation that IRC § 243(c) governs the inclusion of Costco International's dividend provides symmetry to the 80 percent foreign dividend exclusion in AS 43.20.145(b)(1). Costco's interpretation that IRC § 243(a)(3) governs Costco international's dividend does not.

Costco argues that if AS 43.20.145(b)(1) were unconstitutional, the remedy would be to allow exclusion of 100 percent of foreign corporation dividends, rather than to require inclusion of 20 percent of dividends from domestic unitary corporations excluded from the return. That argument, however, would be correct only if a construction of the statute that avoided the unconstitutionality would not be reasonably feasible. Here, the need to avoid an unconstitutional result guides the administrative tax court to favor an interpretation that for purposes of the dividend-received deduction, the term "affiliated group" in IRC § 243(b)(2) is the combined-report group in AS 43.20.145(a).

4. The legislative intent expressed in the legislative history of the water's edge statute.

The legislative history of the water's edge statute also sheds light on whether the legislature intended symmetrical or asymmetrical treatment of dividends depending on the place of incorporation of the subsidiary paying the dividend. As explained above, the original water's edge bill introduced in 1989 would have applied only to foreign parent corporations.[57] Domestic

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[54] 331 P.3d at 341.

[55] *Id.*

[56] *Id.*

[57] SB 119 (Introduced January 17, 1989) *available at*: http://www.akleg.gov/library/waters%20edge/1989-1990%20SB119/1989-1990%20SB119%20SITT%20Bill%20File.pdf. A companion bill in the house did not receive any hearings in the House Finance Committee. *See* Alaska State Legislature, *Alaska House Bill History, 1989-1990,* "HB281" (1991) at 158-59.

corporations would not have been permitted to use the water's edge reporting method for their foreign subsidiaries. Under the original bill, no provision was made for a dividend-received deduction for foreign or domestic subsidiaries.

In rejecting the original SB 119 in favor of the committee substitute, the Co-Chair of the committee, Senator Uehling, explained that the committee substitute was "designed to treat all multinational corporations fairly and equally."[58] Senator Uehling was critical of the original legislation, which, he explained, "would actually place domestic multinational corporations at a competitive disadvantage."[59] He advocated for fair and evenhanded treatment "regardless of where the corporation was incorporated."[60]

Under the committee substitute, for foreign parents with domestic subsidiaries and domestic parents with foreign subsidiaries, 20 percent of foreign dividend income would be included in apportionable income. It does not appear that anyone thought about the situation we have here—a domestic subsidiary, with mainly foreign activity, that paid dividends to a parent that is a taxpayer in Alaska.

The emphasis on equal treatment regardless of place of incorporation, however, is evidence of legislative intent that the inclusion of foreign dividend income should be the same without regard for the place of incorporation of the dividend-paying subsidiary. This is the result that would be achieved by the Department's interpretation that "affiliated group" in IRC § 243, when incorporated into Alaska law, means the combined-report group in AS 43.20.145(a). I conclude that the intent of the 1991 legislature was to adopt equal treatment of foreign income without regard to the place of incorporation of the corporation that paid the dividend. This conclusion favors the Department's approach.[61]

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58 Department Exhibit 3 at 7 (Minutes, Senate Finance Committee, March 1, 1990).

59 *Id.*

60 *Id.*

61 One issue of statutory construction not addressed by the parties is the tenet that disfavors adoption of a construction that makes part of a statute superfluous. *See, e.g., Mechanical Contractors of Alaska, Inc. v. State, Dep't of Pub. Safety*, 91 P.3d 240, 248 (Alaska 2004). Here, the application of IRC § 243(c) may make AS 43.20.145(b)(1) superfluous because 20 percent of the foreign dividend might already be included in income by virtue of the application of IRC § 243(c). Without guidance from the parties, however, I do not know whether AS 43.20.145(b)(1) would be made superfluous by this construction. Moreover, *Mechanical Contractors* cautioned that "[s]trict construction does not require that statutes be given the narrowest meaning allowed by their language; rather, the language should be given a 'reasonable or common sense construction, consonant with the objectives of the legislature.' The intent of the legislature must govern and the policies and purposes of the statute should not be defeated." *Id.* (citing *Kodiak Island Borough v. Exxon Corp.*, 991 P.2d 757, 761 (Alaska 1999) (quoting *Rydwell v. Anchorage Sch. Dist.*, 864 P.2d 526, 530–31 (Alaska 1993))). Thus, if the interpretation adopted here leads to AS 43.20.145(b)(1) being superfluous, then, in this case, the other factors that govern statutory construction, including the tenet of avoiding an unconstitutional result, adhering to legislative intent, and implementing the purpose of the statute, outweigh the tenet of avoiding superfluity.

F. Is the Department's approach consistent with the text of the statutes?

This decision has applied the guidance from the court on how the incorporation of the IRC works in practice in this situation, including analyzing the purpose of the statute in question, the tenets of statutory construction, the legislative history, and guidance from previous cases addressing similar issues. All of these factors strongly favor the Department's view that taxation of a dividend paid by a domestic subsidiary excluded from the combined report is the same as the taxation of a dividend paid by a foreign subsidiary excluded from the combined report.

This persuasive support for equal treatment of domestic and foreign corporations, and for adhering to the purposes of the statutes being applied, confirms the simple, commonsense approach taken by the Informal Conference Decision. Common sense tells us that the affiliated group referred to by IRC § 243 for purposes of the dividend-received deduction means the group identified in AS 43.20.145(a) as the group that must submit a combined report in Alaska. That the Alaska statute should go through a two-step process, and first identify a worldwide group that it calls the "affiliated group," only to winnow that group down to the combined-report group, has no bearing or significance here, and does not affect the analysis of how the incorporation of IRC § 243 works in practice. That the incorporation works to ensure equal treatment of similarly-situated subsidiary corporations without regard to place of incorporation is not only a matter of common sense, it is also precisely in line with the holdings of *Gulf, OSG,* and *Schlumberger.* These cases instruct that the federal government's approach to taxation of foreign income is not compatible with the Alaska approach. This result also aligns with the legislative history of the water's edge statute, which demonstrated a legislative commitment to treat corporations the same without regard to place of incorporation.

In an attempt to find more of a textual basis for the Informal Conference Decision, the Department has emphasized the use of the term "includible" in the section of the IRC that defines the term "affiliated group":

> The statutory support for the 80% [dividend-received deduction] can be simply summarized. Alaska has its own statute for determining which corporations are includible for combined reporting. Under AS 43.20.145, [Costco International] is not an includible corporation. Alaska has incorporated 26 U.S.C. § 243 and applies its provisions to determine the appropriate [dividend-received deduction] percentage. Because the dividend at issue is not from an includible corporation, it cannot be a qualifying dividend. Because only qualifying dividends are entitled to a 100% [dividend-received deduction], the dividend from [Costco

International] to [Costco Wholesale] is limited to 80%.[62]

The Department's explanation does provide some textual basis for its approach. Ultimately, however, the attempt to do a formalistic textual analysis would raise additional questions about when federal law applies and when state law applies.[63] We must therefore recognize that the Department's reliance on the term "includible" is still grounded in common sense and context—it simply makes sense in context that the term "includible" in federal law means "includible in the Alaska return" when the term "includible" is incorporated into Alaska law.

In sum, the process for determining how the incorporation of the Internal Revenue Code into Alaska law works in practice cannot be based on either a mechanical substitution or a subjective view of what should be a "common sense" result. If a contextual interpretation is required, careful inquiry into the purpose of the statute, the legislative intent, and other guides to statutory construction must be undertaken. In this case, the Department's contextual interpretation of the statutes is affirmed because it is a logical result based on the purpose of the statute, implements legislative intent to treat domestic and foreign subsidiaries alike, and is consistent with the tenets of statutory construction.

IV. Conclusion

The Alaska statute on water's edge apportionment incorporates the 80 percent dividend-received deduction under IRC § 243(c). This statute applies to dividends received by Costco

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62 State's Reply Memorandum at 3.

63 Questions raised by the Department's approach include that it elides over the textual reality that federal law defines "includible" and state law does not. Although that textual anomaly can be easily explained, it clearly requires an inelegant exercise of bouncing between state and federal law. Others anomalies appear to require further inquiry. For example, the federal definition of "affiliated group" applies only to 80-percent-owned corporations, whereas the state definition would apply to 50-percent-or-more-owned corporations. *Compare* AS 43.20.145(h)(2) *with* IRC § 1504(a). The Department's approach of claiming strict textual adherence to the federal definition could be problematic because the affiliated group describes all entities that are allowed the 100 percent dividend-received deduction under IRC § 243(a)(3). To avoid double taxation, all corporations in the combined return must be able to take advantage of the 100 percent dividend-received deduction or the intercompany dividend elimination. If the federal definition of affiliated group applies to IRC § 243 for *all* purposes, only 80-percent corporations are governed by IRC § 243(a)(3), which may leave some 50-79.99 percent subsidiaries included in the combined report subject to double taxation. A related issue is that the text of IRC § 243(c)—the section that the Department says governs all subsidiaries that are not included in the combined return—on its face applies to dividends received from a "20-percent owned corporation." To get to the result that we reach in this case, however, requires that we say that the Alaska definition of affiliated group as 50-percent-or-more-owned corporations does not apply. That means that the limitations of 50-percent ownership does not expressly limit the application of the incorporated IRC § 243(c). In theory, this could mean that in a future case, dividends from a 20-49.99 percent corporation could be apportioned and taxed. This could be a problematic result because the corporation's factors would not be included in the apportionment formula. How these issues could play out may be matters for future cases that may need to inquire into more formal issues regarding the incorporation of IRC § 243. I suspect that a skilled technician could likely wend his or her way among state and federal law to find textual support for a number of different results. In this case, however, the support for equal treatment is so strong that we do not need to call on technical wizardry to find the answer to question posed here.

Wholesale Corporation from its domestic subsidiary, Costco Wholesale International Inc. The Department's assessment of additional tax against Costco Wholesale is affirmed.

DATED this 12th of June, 2017.

By: *Signed*
Stephen C. Slotnick
Administrative Law Judge

NOTICE

This is the decision of the Administrative Law Judge under AS 43.05.465(a). Unless reconsideration is ordered, this decision will become the final administrative decision 60 days from the date of service of this decision.[64]

A party may request reconsideration in accordance with AS 43.05.465(b) within 30 days of the date of service of this decision.

When the decision becomes final, the decision and the record in this appeal become public records unless the Administrative Law Judge has issued a protective order requiring that specified parts of the record be kept confidential.[65] A party may file a motion for a protective order, showing good cause why specific information in the record should remain confidential, within 30 days of the date of service of this decision.[66]

Judicial review of this decision may be obtained by filing an appeal in the Alaska Superior Court in accordance with AS 43.05.480 within 30 days after the date on which this decision becomes final.[67]

[This document has been modified to conform to the technical standards for publication.]

64 AS 43.05.465(f)(1).
65 AS 43.05.470.
66 AS 43.05.470(b).
67 AS 43.05.465 sets out the timelines for the decision becoming final.