

IN THE HOUSE OF REPRESENTATIVES

HOUSE BILL NO. 363

BY REVENUE AND TAXATION COMMITTEE

AN ACT

RELATING TO INCOME TAXES; AMENDING SECTION 63-3022, IDAHO CODE, TO PROVIDE TREATMENT FOR CERTAIN PASSIVE LOSSES INCURRED WHEN A TAXPAYER DID NOT CONDUCT BUSINESS IN IDAHO; DECLARING AN EMERGENCY AND PROVIDING RETROACTIVE APPLICATION.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Section 63-3022, Idaho Code, be, and the same is hereby amended to read as follows:

63-3022. ADJUSTMENTS TO TAXABLE INCOME. The additions and subtractions set forth in this section, and in sections 63-3022A through 63-3022Q, Idaho Code, are to be applied to the extent allowed in computing Idaho taxable income:

(a) Add any state and local taxes, as defined in section 164 of the Internal Revenue Code and, measured by net income, paid or accrued during the taxable year adjusted for state or local tax refunds used in arriving at taxable income.

(b) Add the net operating loss deduction used in arriving at taxable income.

(c) (1) A net operating loss for any taxable year commencing on and after January 1, 2000, shall be a net operating loss carryback not to exceed a total of one hundred thousand dollars (\$100,000) to the two (2) immediately preceding taxable years. Any portion of the net operating loss not subtracted in the two (2) preceding years may be subtracted in the next twenty (20) years succeeding the taxable year in which the loss arises in order until exhausted. The sum of the deductions may not exceed the amount of the net operating loss deduction incurred. At the election of the taxpayer, the two (2) year carryback may be foregone and the loss subtracted from income received in taxable years arising in the next twenty (20) years succeeding the taxable year in which the loss arises in order until exhausted. The election shall be made as under section 172(b)(3) of the Internal Revenue Code. An election under this subsection must be in the manner prescribed in the rules of the state tax commission and once made is irrevocable for the year in which it is made. The term "income" as used in this subsection (c) means Idaho taxable income as defined in this chapter as modified by section 63-3021(b)(2), (3) and (4), Idaho Code.

(2) Net operating losses incurred by a corporation during a year in which such corporation did not transact business in Idaho or was not included in a group of corporations combined under subsection (t) of section 63-3027, Idaho Code, may not be subtracted. However, if at least one (1) corporation within a group of corporations combined under subsection (t) of section 63-3027, Idaho Code, was transacting business

1 in Idaho during the taxable year in which the loss was incurred, then the
 2 net operating loss may be subtracted. Net operating losses incurred by
 3 a person, other than a corporation, in activities not taxable by Idaho
 4 may not be subtracted.

5 (d) In the case of a corporation, add the amount deducted under the pro-
 6 visions of sections 243(a) and (c), 244, 245 and 246A of the Internal Revenue
 7 Code (relating to dividends received by corporations) as limited by section
 8 246(b) (1) of said code.

9 (e) In the case of a corporation, subtract an amount determined under
 10 section 78 of the Internal Revenue Code to be taxable as dividends.

11 (f) Subtract the amount of any income received or accrued during the
 12 taxable year which is exempt from taxation by this state, under the provi-
 13 sions of any other law of this state or a law of the United States, if not pre-
 14 viously subtracted in arriving at taxable income.

15 (g) For the purpose of determining the Idaho taxable income of the bene-
 16 ficiary of a trust or of an estate:

17 (1) Distributable net income as defined for federal tax purposes shall
 18 be corrected for the other adjustments required by this section.

19 (2) Net operating losses attributable to a beneficiary of a trust or es-
 20 tate under section 642 of the Internal Revenue Code shall be a deduction
 21 for the beneficiary to the extent that income from the trust or estate
 22 would be attributable to this state under the provisions of this chap-
 23 ter.

24 (h) In the case of an individual who is on active duty as a full-time
 25 officer, enlistee or draftee, with the armed forces of the United States,
 26 which full-time duty is or will be continuous and uninterrupted for one hun-
 27 dred twenty (120) consecutive days or more, deduct compensation paid by the
 28 armed forces of the United States for services performed outside this state.
 29 The deduction is allowed only to the extent such income is included in tax-
 30 able income.

31 (i) In the case of a corporation, including any corporation included
 32 in a group of corporations combined under subsection (t) of section 63-3027,
 33 Idaho Code, add any capital loss or passive loss deducted which loss was in-
 34 curred during any year in which such corporation did not transact business in
 35 Idaho. However, do not add any capital loss deducted if a corporation, in-
 36 cluding any corporation in a group of corporations combined under subsection
 37 (t) of section 63-3027, Idaho Code, was transacting business in Idaho dur-
 38 ing the taxable year in which the loss was incurred. In the case of persons,
 39 other than corporations, add any capital loss or passive loss deducted which
 40 was incurred in activities not taxable by Idaho at the time such loss was in-
 41 curred. In computing the income taxable to an S corporation or partnership
 42 under this section, deduction shall not be allowed for a carryover or carry-
 43 back of a net operating loss provided for in subsection (c) of this section
 44 or a capital loss or passive loss provided for in section 1212 of the Internal
 45 Revenue Code.

46 (j) In the case of an individual, there shall be allowed as a deduction
 47 from gross income either (1) or (2) at the option of the taxpayer:

48 (1) The standard deduction as defined in section 63, Internal Revenue
 49 Code.

(2) Itemized deductions as defined in section 63 of the Internal Revenue Code except state or local taxes measured by net income and general sales taxes as either is defined in section 164 of the Internal Revenue Code.

(k) Add the taxable amount of any lump sum distribution excluded from gross income for federal income tax purposes under the ten (10) year averaging method. The taxable amount will include the ordinary income portion and the amount eligible for the capital gain election.

(l) Deduct any amounts included in gross income under the provisions of section 86 of the Internal Revenue Code relating to certain social security and railroad benefits.

(m) In the case of a self-employed individual, deduct the actual cost of premiums paid to secure worker's compensation insurance for coverage in Idaho, if such cost has not been deducted in arriving at taxable income.

(n) In the case of an individual, deduct the amount contributed to a college savings program pursuant to chapter 54, title 33, Idaho Code, but not more than four thousand dollars (\$4,000) per tax year. If the contribution is made on or before April 15, 2001, it may be deducted for tax year 2000 and an individual can make another contribution and claim the deduction according to the limits provided in this subsection during 2001 for tax year 2001, as long as the contribution is made on or before December 31, 2001.

(o) In the case of an individual, add the amount of a nonqualified withdrawal from an individual trust account or savings account established pursuant to chapter 54, title 33, Idaho Code, less any amount of such nonqualified withdrawal included in the individual's federal gross income pursuant to section 529 of the Internal Revenue Code.

(p) In the case of an individual, add the amount of a withdrawal from an individual trust account or savings account established pursuant to chapter 54, title 33, Idaho Code, transferred to a qualified tuition program, as defined in section 529 of the Internal Revenue Code, that is operated by a state other than Idaho. The addition provided in this subsection is limited to the amount of the contributions to the Idaho individual trust account or savings account by the account owner that were deducted on the account owner's income tax return for the year of the transfer and the prior taxable year.

SECTION 2. An emergency existing therefor, which emergency is hereby declared to exist, this act shall be in full force and effect on and after its passage and approval, and retroactively to January 1, 2012.