

IN THE HOUSE OF REPRESENTATIVES

HOUSE BILL NO. 365

BY REVENUE AND TAXATION COMMITTEE

AN ACT

RELATING TO INCOME TAXES; AMENDING SECTION 63-3022, IDAHO CODE, TO CLARIFY THE DEDUCTION FOR NET OPERATING LOSSES; AMENDING SECTION 63-3022O, IDAHO CODE, TO CLARIFY THE ADJUSTED BASIS OF DEPRECIABLE PROPERTY, DEPRECIATION AND GAINS AND LOSSES RELATING TO PROPERTY OTHERWISE SUBJECT TO SUBSECTION (k) OF SECTION 168 OF THE INTERNAL REVENUE CODE; AMENDING SECTION 63-3029I, IDAHO CODE, TO PROVIDE A CORRECT CITATION; AMENDING SECTION 63-3067, IDAHO CODE, TO REMOVE OBSOLETE AND SURPLUS LANGUAGE; 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 from income in the two (2) preceding years may be subtracted from income 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

1 included in a group of corporations combined under subsection (t) of
2 section 63-3027, Idaho Code, may not be subtracted. However, if at
3 least one (1) corporation within a group of corporations combined under
4 subsection (t) of section 63-3027, Idaho Code, was transacting business
5 in Idaho during the taxable year in which the loss was incurred, then the
6 net operating loss may be subtracted. Net operating losses incurred by
7 a person, other than a corporation, in activities not taxable by Idaho
8 may not be subtracted.

9 (d) In the case of a corporation, add the amount deducted under the pro-
10 visions of sections 243(a) and (c), 244, 245 and 246A of the Internal Revenue
11 Code (relating to dividends received by corporations) as limited by section
12 246(b) (1) of said code.

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

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

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

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

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

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

35 (i) In the case of a corporation, including any corporation included
36 in a group of corporations combined under subsection (t) of section 63-3027,
37 Idaho Code, add any capital loss deducted which loss was incurred during any
38 year in which such corporation did not transact business in Idaho. However,
39 do not add any capital loss deducted if a corporation, including any corpo-
40 ration in a group of corporations combined under subsection (t) of section
41 63-3027, Idaho Code, was transacting business in Idaho during the taxable
42 year in which the loss was incurred. In the case of persons, other than cor-
43 porations, add any capital loss deducted which was incurred in activities
44 not taxable by Idaho at the time such loss was incurred. In computing the in-
45 come taxable to an S corporation or partnership under this section, deduc-
46 tion shall not be allowed for a carryover or carryback of a net operating loss
47 provided for in subsection (c) of this section or a capital loss provided for
48 in section 1212 of the Internal Revenue Code.

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

(1) The standard deduction as defined in section 63, Internal Revenue 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. That Section 63-30220, Idaho Code, be, and the same is hereby amended to read as follows:

63-30220. ADJUSTMENT -- PROPERTY ACQUIRED AFTER SEPTEMBER 10, 2001 -- EXPENSES OF ELEMENTARY AND SECONDARY TEACHERS -- SMALL BUSINESS EXPENSES -- LIMITATIONS ON ASSESSMENTS AND REFUNDS. For taxable years commencing on and after January 1, 2001, in computing Idaho taxable income:

(1) The adjusted basis of depreciable property, depreciation and gains and losses from sale, exchange or other disposition of depreciable property acquired after September 10, 2001, and before December 31, 2007, shall be computed without regard to subsection (k) of section 168 of the Internal Revenue Code and the adjusted basis of depreciable property, depreciation and ~~capital~~ gains and losses shall be computed without regard to subsection (k) of section 168 of the Internal Revenue Code, as amended by the "tax relief,

1 unemployment insurance reauthorization and job creation act of 2010" and as
2 amended by the "small business jobs act of 2010"; and

3 (2) No deduction shall be allowed relating to expenses of elementary
4 and secondary teachers otherwise allowable under section 62(a)(2)(D) of the
5 Internal Revenue Code; and

6 (3) Adjustments in computing Idaho taxable income required by subsec-
7 tion (1) of this section shall be made without regard to loss limitations im-
8 posed by sections 465, 469, 704(d) and 1366(d) of the Internal Revenue Code;
9 and

10 (4) A taxpayer's basis in an interest in a pass-through entity, amount
11 at risk, and passive activity loss carryover shall be the same amount for
12 purposes of the Idaho income tax act as the amount determined under the In-
13 ternal Revenue Code; and

14 (5) Each partner, shareholder, member or beneficiary, shall include in
15 Idaho taxable income his share of the adjustments required by this section in
16 computing Idaho taxable income of any pass-through entity; and

17 (6) Notwithstanding the provisions of sections 63-3068 and 63-3072,
18 Idaho Code, the period of limitations for issuing a notice of deficiency de-
19 termination or filing a claim for refund for any year for which an adjustment
20 is required by this section shall not expire before three (3) years from the
21 later of: (a) the due date of the return for the last taxable year an adjust-
22 ment was required by this section, or (b) the date the return was filed for
23 the last taxable year an adjustment was required by this section. Upon the
24 expiration of the period of limitations as provided in subsections (a) and
25 (m) of section 63-3068, Idaho Code, and subsections (b) and (h) of section
26 63-3072, Idaho Code, only those specific items of basis, deductions, gains
27 or losses that are computed, without regard to subsection (k) of section 168
28 of the Internal Revenue Code, as required by this section shall be subject to
29 adjustment.

30 SECTION 3. That Section 63-3029I, Idaho Code, be, and the same is hereby
31 amended to read as follows:

32 63-3029I. INCOME TAX CREDIT FOR INVESTMENT IN BROADBAND EQUIP-
33 MENT. (1) Subject to the limitations of this section, for taxable years
34 beginning after January 1, 2001, there shall be allowed to a taxpayer a non-
35 refundable credit against taxes imposed by sections 63-3024, 63-3025 and
36 63-3025A, Idaho Code, for qualified expenditures in qualified broadband
37 equipment in Idaho.

38 (2) The credit permitted in subsection (1) of this section shall be
39 three percent (3%) of the qualified investment in qualified broadband equip-
40 ment in Idaho and shall be in addition to the credit for capital investment
41 permitted by section 63-3029B, Idaho Code.

42 (3) As used in this section the term:

43 (a) "Qualified investment" shall be as defined in section 63-3029B,
44 Idaho Code.

45 (b) "Qualified broadband equipment" means equipment that qualifies for
46 the credit for capital investment permitted by section 63-3029B, Idaho
47 Code, and is capable of transmitting signals at a rate of at least two
48 hundred thousand (200,000) bits per second to a subscriber and at least

1 one hundred twenty-five thousand (125,000) bits per second from a sub-
2 scriber, and

3 (i) In the case of a telecommunications carrier, such qualifying
4 equipment shall be necessary to the provision of broadband service
5 and an integral part of a broadband network. "Telecommunications
6 carrier" has the meaning given such term by section ~~3(44)~~ 47 U.S.C.
7 153 of the communications act of 1934, as amended, but does not in-
8 clude a commercial mobile service provider.

9 (ii) In the case of a commercial mobile service carrier, such
10 qualifying equipment shall extend from the subscriber side of the
11 mobile telecommunications switching office to a transmitting/re-
12 ceiving antenna, including such antenna, on the outside of the
13 structure in which the subscriber is located. "Commercial mobile
14 service carrier" means any person authorized to provide commer-
15 cial mobile radio service to subscribers as defined in section
16 20.3 of title 47, Code of Federal Regulations (10-1-99 ed.), as
17 amended.

18 (iii) In the case of a cable or open video system operator, such
19 qualifying equipment shall extend from the subscriber's side of
20 the headend to the outside of the structure in which the subscriber
21 is located. The terms "cable operator" and "open video system op-
22 erator" have the meanings given such terms by sections 602(5) and
23 653, respectively, of the communications act of 1934, as amended.

24 (iv) In the case of a satellite carrier or a wireless carrier
25 other than listed above, such qualifying equipment is only that
26 equipment that extends from a transmitting/receiving antenna,
27 including such antenna, which transmits and receives signals to or
28 from multiple subscribers to a transmitting/receiving antenna on
29 the outside of the structure in which the subscriber is located.
30 "Satellite carrier" means any person using the facilities of a
31 satellite or satellite services licensed by the federal commu-
32 nications commission and operating a fixed-satellite service or
33 direct broadcast satellite services to provide point-to-multi-
34 point distribution of signals. "Other wireless carrier" means
35 any person, other than a telecommunications carrier, commercial
36 mobile service carrier, cable operator, open video operator, or
37 satellite carrier, providing broadband services to subscribers
38 through the radio transmission of energy.

39 (v) In the case of packet switching equipment, such packet equip-
40 ment installed in connection with other qualifying equipment
41 listed in subsections (3)(b)(i) through (3)(b)(iv) of this sec-
42 tion, provided it is the last in a series of equipment that trans-
43 mits signals to a subscriber or the first in a series of equipment
44 that transmits signals from a subscriber. "Packet switching"
45 means controlling or routing the path of a digital transmission
46 signal which is assembled into packets or cells.

47 (vi) In the case of multiplexing and demultiplexing equipment,
48 such equipment only to the extent that it is deployed in connection
49 with providing broadband services in locations between packet
50 switching equipment and the structure in which the subscriber is

located. "Multiplexing" means the transmission of two (2) or more signals over a communications circuit without regard to the communications technology.

(vii) Any property not primarily used to provide services in Idaho to public subscribers is not qualified broadband equipment.

(4) No equipment described in subsections (3) (b) (i) through (3) (b) (vi) of this section shall qualify for the credit provided in subsection (1) of this section until the taxpayer applies to and obtains from the Idaho public utilities commission an order confirming that the installed equipment is qualified broadband equipment. Applications submitted to the commission shall be governed by the commission's rules of procedure. The commission may issue procedural orders necessary to implement this section.

(5) The credit allowed by subsection (1) of this section together with any credits carried forward under subsection (7) of this section shall not, in any one (1) taxable year, exceed the lesser of:

(a) The amount of tax due under sections 63-3024, 63-3025 and 63-3025A, Idaho Code, after allowance for all other credits permitted by this chapter; or

(b) Seven hundred fifty thousand dollars (\$750,000).

When credits earned in more than one (1) taxable year are available, the oldest credits shall be applied first.

(6) In the case of a group of corporations filing a combined report under subsection (t) of section 63-3027, Idaho Code, credit earned by one (1) member of the group but not used by that member may be used by another member of the group, subject to the provisions of subsection (7) of this section, instead of carried over. For a combined group of corporations, credit carried forward may be claimed by any member of the group unless the member who earned the credit is no longer included in the combined group.

(7) If the credit allowed by subsection (1) of this section exceeds the limitation under subsection (5) of this section, the excess amount may be carried forward for a period that does not exceed the next fourteen (14) taxable years.

(8) In the event that qualified broadband equipment upon which the credit allowed by this section has been used ceases to qualify for the credit allowed by section 63-3029B, Idaho Code, or is subject to recapture of that credit, the recapture of credit under this section shall be in the same proportion and subject to the same provisions as the amount of credit required to be recaptured under section 63-3029B, Idaho Code.

(9) (a) Subject to the requirements of this subsection, a taxpayer who earns and is entitled to the credit or to an unused portion of the credit allowed by this section may transfer all or a portion of the unused credit to:

(i) Another taxpayer required to file a return under this chapter; or

(ii) To an intermediary for its use or for resale to a taxpayer required to file a return under this chapter.

In the event of either such a transfer, the transferee may claim the credit on the transferee's income tax return originally filed during the calendar year in which the transfer takes place and, in the case of carryover of the credit, on the transferee's returns for the number of

1 years of carryover available to the transferor at the time of the trans-
2 fer unless earlier exhausted.

3 (b) Before completing a transfer under this subsection, the transferor
4 shall notify the state tax commission of its intention to transfer the
5 credit and the identity of the transferee. The state tax commission
6 shall provide the transferor with a written statement of the amount of
7 credit available under this section as then appearing in the commis-
8 sion's records and the number of years the credit may be carried over.
9 The transferee shall attach a copy of the statement to any return in re-
10 gard to which the transferred credit is claimed.

11 (c) In the event that after the transfer the state tax commission deter-
12 mines that the amount of credit properly available under this section is
13 less than the amount claimed by the transferor of the credit or that the
14 credit is subject to recapture, the commission shall assess the amount
15 of overstated or recaptured credit as taxes due from the transferor and
16 not the transferee. The assessment shall be made in the manner provided
17 for a deficiency in taxes under this chapter.

18 (10) In addition to other needed rules, the state tax commission may
19 promulgate rules prescribing, in the case of S corporations, partnerships,
20 trusts or estates, a method of attributing the credit under this section to
21 the shareholders, partners or beneficiaries in proportion to their share of
22 the income from the S corporation, partnership, trust or estate.

23 SECTION 4. That Section 63-3067, Idaho Code, be, and the same is hereby
24 amended to read as follows:

25 63-3067. REVENUE RECEIVED -- STATE REFUND ACCOUNT. (1) A sum equal to
26 the amount withheld under section 63-3035A, Idaho Code, shall be distributed
27 fifty percent (50%) to the public school income fund to be utilized to facil-
28 itate and provide substance abuse programs in the public school system, and
29 fifty percent (50%) shall be distributed to the counties to be utilized for
30 county juvenile probation services. These funds shall be distributed quar-
31 terly to the counties based upon the percentage the population of the county
32 bears to the population of the state as a whole.

33 (2) All moneys except as provided in subsection (1) of this section, and
34 except as hereinafter provided, received by the state of Idaho under this act
35 shall be deposited by the state tax commission, as received by it, with the
36 state treasurer and shall be placed in and become a part of the general ac-
37 count under the custody of the state treasurer. Providing however, that an
38 amount equal to twenty percent (20%) of the amount deposited with the state
39 treasurer shall be placed in the "state refund account" which is hereby cre-
40 ated for the purpose of repaying overpayments, ~~for the purpose of remitting~~
41 ~~to counties and taxing districts for personal property exempt from taxation~~
42 ~~pursuant to section 63-602EE, Idaho Code, as provided in subsection (3) of~~
43 ~~this section, for the purpose of depositing in the trust accounts specified~~
44 ~~in section 63-3067A, Idaho Code, such amounts as may be designated by indi-~~
45 ~~viduals for the purpose of depositing in the Idaho ag in the classroom ac-~~
46 ~~count an amount as may be designated by the individual receiving a refund~~
47 ~~for such overpayment, and for the purpose of paying any other erroneous re-~~
48 ~~ceipts illegally assessed or collected, penalties collected without author-~~
49 ~~ity and taxes and licenses unjustly assessed, collected or which are exces-~~

1 sive in amount. Whenever necessary for the purpose of making prompt payment
2 of refunds, the board of examiners, upon request from the state tax commis-
3 sion, and after review, may authorize the state tax commission to transfer
4 any additional specific amount from income tax collections to the "state re-
5 fund account." There is appropriated out of the state refund account so much
6 thereof as may be necessary for the payment of the refunds herein provided.
7 Claims for, and payment of refunds under the provisions of this section shall
8 be made in the same manner as other claims against the state of Idaho.

9 (3) Any unencumbered balance remaining in the state refund account on
10 June 30 of each and every year in excess of the sum of one million five hundred
11 thousand dollars (\$1,500,000) shall be transferred to the general fund and
12 the state controller is hereby authorized and directed on such dates to make
13 such transfers unless the board of examiners, which is hereby authorized to
14 do so, changes the date of transfer or sum to be transferred.

15 SECTION 5. An emergency existing therefor, which emergency is hereby
16 declared to exist, this act shall be in full force and effect on and after its
17 passage and approval, and retroactively to January 1, 2012.