

IN THE HOUSE OF REPRESENTATIVES

HOUSE BILL NO. 383

BY REVENUE AND TAXATION COMMITTEE

AN ACT

RELATING TO INCOME TAXES; AMENDING SECTION 63-3072, IDAHO CODE, TO DELETE REFERENCES TO ESTIMATED PAYMENTS AND TO PROVIDE A STATUTE OF LIMITATIONS WHEN THE STATE TAX COMMISSION HAS MADE AN ASSESSMENT; DECLARING AN EMERGENCY AND PROVIDING RETROACTIVE APPLICATION.

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

SECTION 1. That Section 63-3072, Idaho Code, be, and the same is hereby amended to read as follows:

63-3072. CREDITS AND REFUNDS. (a) Subject to the provisions of subsections (b), (c) and (h) of this section, where there has been an overpayment of the tax imposed by the provisions of this chapter, the amount of such overpayment shall be credited against any tax administered by the state tax commission which tax is then due from the taxpayer, and any balance of such excess shall be refunded to the taxpayer.

(b) Except in regard to amounts withheld as provided in section 63-3035, 63-3035A or 63-3036, Idaho Code, or amounts paid as estimated payments ~~under section 63-3036A, Idaho Code,~~ a claim for credit or refund of tax, penalties, or interest paid shall be made within the later of three (3) years of the due date of the return, without regard to extensions, or three (3) years from the date the return was filed. However, with regard to remittances received with an extension of time to file, or a tentative return, a claim for credit or refund of such remittances shall be made within three (3) years from the due date of the return without regard to extensions.

(c) With regard to amounts withheld as provided in section 63-3035, 63-3035A or 63-3036, Idaho Code, or amounts paid as estimated payments ~~under section 63-3036A, Idaho Code,~~ a claim for credit or refund shall be made within three (3) years from the due date of the return, without regard to extensions, for the taxable year in respect to which the tax was withheld or paid.

(d) Notwithstanding any other provisions of this section, when Idaho taxable income and/or tax credits for any taxable year have been adjusted as a result of a final federal determination, the period of limitations for claiming a refund or credit of tax, penalties, or interest shall be reopened and shall not expire until the later of one (1) year from the date of delivery of the final federal determination to the taxpayer by the internal revenue service, three (3) years from the due date of the return, without regard to extensions, or three (3) years from the date the return was filed. For purposes of this subsection, the term "final federal determination" shall mean the final resolution of all issues which were adjusted by the internal revenue service. When the final federal determination is submitted, the taxpayer shall also submit copies of all schedules and written explanations provided by the internal revenue service. Upon the expiration of the period

1 of limitations as provided in subsections (b) and (h) of this section,  
 2 only those specific items of income, deductions, gains, losses or credits  
 3 which were adjusted in the final federal determination shall be subject to  
 4 adjustment for purposes of recomputing Idaho income, deductions, gains,  
 5 losses, credits, and the effect of such adjustments on Idaho allocations and  
 6 apportionments.

7 (e) If a claim for credit or refund relates to an overpayment  
 8 attributable to a net operating loss carryback or a capital loss carryback,  
 9 in lieu of the period of limitations prescribed in subsection (b) of this  
 10 section, the period shall be that period which ends with the expiration of  
 11 the fifteenth day of the fortieth month following the end of the taxable year  
 12 of the net operating loss or capital loss which results in such carryback.

13 (f) If an adjustment, which was made within the period of limitations  
 14 as provided in this section, affects the amount of tax credit, net operating  
 15 loss, or capital loss, claimed in a taxable year other than the tax year in  
 16 which the adjustment is made, then adjustments to the credit, net operating  
 17 loss, or capital loss, claimed in such other tax year may be made and a claim  
 18 for credit or refund of tax, penalties or interest may be made even though  
 19 such claim would otherwise be barred under the provisions of this section.

20 (g) In the case of a duplicate return filed under section 63-217(1)(b),  
 21 Idaho Code, the limitations under this section shall be the later of one (1)  
 22 year from the filing of the duplicate return or the date otherwise applicable  
 23 under this section.

24 (h) Prior to the expiration of the time prescribed in this section  
 25 for credit or refund of any tax imposed by the provisions of this chapter,  
 26 both the state tax commission or its delegate or deputy and the taxpayer  
 27 may consent in writing to extend such period of time. The period so agreed  
 28 upon may be extended by subsequent agreements in writing made before the  
 29 expiration of the period previously agreed upon. When a pass-through  
 30 entity extends the period of limitations in accordance with the provisions  
 31 of this subsection the period of limitations for the other taxpayers is  
 32 automatically extended for the same period for the purpose of claiming  
 33 a credit or refund of tax, penalties or interest by the other taxpayers  
 34 reflecting the pass-through entity adjustments.

35 (i) The expiration of the period of limitations as provided in this  
 36 section shall be suspended for the time period between the issuance by the  
 37 state tax commission of a notice under either section 63-3045 or 63-3065,  
 38 Idaho Code, and the final resolution of any proceeding resulting from the  
 39 notice.

40 (j) Appeal of a state tax commission decision denying in whole or in  
 41 part a claim for credit or refund shall be made in accordance with and within  
 42 the time limits prescribed in section 63-3049, Idaho Code.

43 (k) ~~For purposes of this section, "return" includes a notice of~~  
 44 ~~deficiency determination issued by the state tax commission when no return~~  
 45 ~~was filed by the taxpayer. Such a return is deemed filed on the date the taxes~~  
 46 ~~determined by the state tax commission are assessed. Once the tax commission~~  
 47 ~~makes an assessment for a period where a return has not been filed, a credit~~  
 48 ~~or claim for refund may only be made by filing an amended return within three~~  
 49 ~~(3) years from the original due date of the return.~~

1       SECTION 2. An emergency existing therefor, which emergency is hereby  
2 declared to exist, this act shall be in full force and effect on and after its  
3 passage and approval, and retroactively to January 1, 2009.