

IN THE HOUSE OF REPRESENTATIVES

HOUSE BILL NO. 139

BY REVENUE AND TAXATION COMMITTEE

AN ACT

RELATING TO INCOME TAXATION; AMENDING SECTION 63-3026A, IDAHO CODE, TO PROVIDE FOR A SOURCING FORMULA TO IDAHO FOR PARTNERSHIP INCOME WITH EXCEPTIONS; DECLARING AN EMERGENCY AND PROVIDING RETROACTIVE APPLICATION.

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

SECTION 1. That Section 63-3026A, Idaho Code, be, and the same is hereby amended to read as follows:

63-3026A. COMPUTING IDAHO TAXABLE INCOME OF PART-YEAR OR NONRESIDENT INDIVIDUALS, TRUSTS AND ESTATES. (1) For nonresident individuals, trusts, or estates the term "Idaho taxable income" includes only those components of Idaho taxable income as computed for a resident which are derived from or related to sources within Idaho. This is to be computed without the deductions for either the standard deduction or itemized deductions or personal exemptions except as provided in subsection (4) of this section.

(2) For part-year resident individuals, trusts or estates the term "Idaho taxable income" includes the total of: (a) Idaho taxable income as computed for a resident for the portion of the tax period during which a taxpayer is domiciled in or is residing in Idaho, plus (b) those components of Idaho taxable income which are derived from or related to sources within Idaho for that portion of the tax period during which a taxpayer is not domiciled in and is not residing in Idaho. This is to be computed without the deductions for either the standard deduction or itemized deductions or personal exemptions except as provided in subsection (4) of this section.

(3) For the purposes of subsections (1) and (2) of this section:

(a) Income shall be considered derived from or relating to sources within Idaho when such income is attributable to or resulting from:

(i) Any business, trade, profession or occupation conducted or carried on in this state, including the distributive share of partnership income and deductions, and the pro rata share of S corporation income and deductions. Partnership income, including guaranteed payments pursuant to section 707 of the Internal Revenue Code, is sourced to Idaho based upon the Idaho apportionment factor of the partnership; excluding:

1. Guaranteed payment to a retired partner per 4 U.S.C. section 114(b)(1)(I) that is sourced to the recipient's state of domicile;

2. Guaranteed payment to an individual partner up to two hundred fifty thousand dollars (\$250,000) in any calendar year is sourced as compensation for services. The amount of the guaranteed payment in excess of two hundred fifty thousand dollars (\$250,000) is sourced to Idaho based upon the partnership's Idaho apportionment factor. The two hundred

1 fifty thousand dollar (\$250,000) amount will be adjusted
2 annually by multiplying the amount by the percentage (the
3 consumer price index for the calendar year immediately pre-
4 ceding the calendar year to which the adjusted amount will
5 apply divided by the consumer price index for calendar year
6 2013) as defined in section 63-3024, Idaho Code;

7 (ii) The ownership or disposition of any interest in real or tan-
8 gible personal property located in this state;

9 (iii) The ownership or disposition of any interest in intangible
10 personal property only to the extent that such property is em-
11 ployed in a business, trade, profession or occupation conducted
12 or carried on in this state. Provided however, that interest
13 income from an installment sale of real or tangible personal prop-
14 erty shall constitute income from sources within this state to
15 the extent that the property sold was located within this state.
16 Provided further, that interest income received by a partner or
17 shareholder of a partnership or S corporation from such partner-
18 ship or S corporation shall constitute income from sources within
19 this state to the extent that the partnership or S corporation is
20 transacting business within this state;

21 (iv) A resident estate or trust; provided however, that income
22 distributed to beneficiaries of an estate or trust shall consti-
23 tute income from sources within this state only to the extent the
24 income would be Idaho source income if such income had been re-
25 ceived directly by a nonresident individual;

26 (v) A nonresident estate or trust to the extent the income and de-
27 ductions of the nonresident estate or trust were derived from or
28 related to sources within this state;

29 (vi) The conduct of pari-mutuel wagering, charitable gaming or
30 any other form of gambling taking place within this state, except
31 as expressly limited in section 67-7439, Idaho Code;

32 (vii) Gains or losses realized from the sale or other disposi-
33 tion of a partnership interest or stock in an S corporation to the
34 extent of the partnership's or S corporation's Idaho apportion-
35 ment factor in the taxable year immediately preceding the year of
36 sale. In the case of a nonresident individual who sells the non-
37 resident's interest in a publicly traded partnership defined in
38 section 7704 of the Internal Revenue Code doing business in Idaho,
39 the gains or losses shall be determined using the amount described
40 in section 751 of the Internal Revenue Code, multiplied by the ap-
41 portionment factor for the year in which the sale occurred.

42 (b) Notwithstanding the provisions of subsection (3)(a) of this sec-
43 tion, transactions and investments made, placed or directed by Idaho
44 resident registered broker-dealers and investment advisers or institu-
45 tions exempt from registration under the Idaho securities act in secu-
46 rities listed with or through the New York Stock Exchange, the American
47 Stock Exchange or any other stock exchange registered with the United
48 States securities and exchange commission and approved by the director
49 of the department of finance which generate dividends, interest, capi-
50 tal gains or similar profits or returns for nonresidents not otherwise

1 subject to Idaho income taxation shall not result in the intangible
2 property being deemed to have a situs outside the domicile of the owner.

3 (c) Nonresident individuals shall not be taxable on investment income
4 from a qualified investment partnership. For purposes of this para-
5 graph, a "qualified investment partnership" means a partnership, as
6 defined in section 63-3006B, Idaho Code, that derives at least ninety
7 percent (90%) of its gross income from investments that produce income
8 that would not be taxable to a nonresident individual if the investment
9 were held by that individual.

10 (d) Compensation paid by the United States for active service in the
11 armed forces of the United States, performed by an individual not domi-
12 ciled in this state, shall not constitute income derived from or related
13 to sources within this state.

14 (e) The income of nonresident or part-year resident individuals,
15 trusts or estates which is derived from or related to sources both
16 within and without this state shall be attributable to this state in the
17 manner prescribed in the rules of the state tax commission.

18 (4) In computing the Idaho taxable income of a part-year or nonresi-
19 dent individual, trust or estate, the standard deduction or itemized deduc-
20 tions, as defined in section 63-3022(j), Idaho Code, if applicable, and the
21 exemptions, as defined in section 151 of the Internal Revenue Code or any al-
22 lowance in lieu of such deduction, shall be allowed in the proportion that
23 paragraph (a) of this subsection bears to paragraph (b) of this subsection:

24 (a) The Idaho taxable income of the taxpayer modified as follows:

25 (i) No allowance shall be made for either the standard deduction
26 or itemized deductions;

27 (ii) No deduction shall be made for personal exemptions or any al-
28 lowance in lieu of such deduction.

29 (b) The Idaho taxable income as would be calculated for a resident of
30 Idaho modified as follows:

31 (i) No allowance shall be made for either a standard deduction or
32 itemized deductions;

33 (ii) No deduction shall be made for personal exemptions or any al-
34 lowance in lieu of such deduction;

35 (iii) Compensation for active military service in the armed forces
36 shall not be deducted;

37 (iv) Income earned within the original exterior boundaries of any
38 federally created Indian reservation by an enrolled Indian in a
39 federally recognized Indian tribe on a federally recognized In-
40 dian reservation shall be added if not otherwise included.

41 (5) An adjustment may be made to eliminate distortions in the amount
42 of net income attributable to a taxpayer's activities within the state of
43 Idaho. Such deductions shall be limited to circumstances involving item-
44 ized deductions as referred to in subsection (4) of this section and which
45 reflect:

46 (a) A failure to reflect the net income or deduction after reimburse-
47 ments have been received; or

48 (b) A failure to reflect the net amount of mortgage interest income or
49 expense from activities within Idaho.

1 (6) For the purposes of subsections (1) and (2) of this section, de-
2 ductions and adjustments allowed in computing the Idaho taxable income of
3 nonresident and part-year resident individuals, trusts and estates shall be
4 prescribed in the rules of the state tax commission. Such rules shall be
5 based upon:

6 (a) Whether or not the deduction or adjustment is related to the produc-
7 tion of income reportable to Idaho;

8 (b) Whether or not the deduction or adjustment is related to income re-
9 ceived, expenses paid, or events of tax consequence which occurred dur-
10 ing a portion of a taxable year that the taxpayer was domiciled in or re-
11 siding in Idaho; or

12 (c) Any other appropriate basis for making the adjustment. An "appro-
13 priate basis" is one which the state tax commission finds is needed to
14 insure that the amount of Idaho taxable income is fairly and reasonably
15 related to a taxpayer's activities in this state.

16 SECTION 2. An emergency existing therefor, which emergency is hereby
17 declared to exist, this act shall be in full force and effect on and after its
18 passage and approval, and retroactively to January 1, 2013.