

IN THE HOUSE OF REPRESENTATIVES

HOUSE BILL NO. 38

BY REVENUE AND TAXATION COMMITTEE

AN ACT

1 RELATING TO INCOME TAX; AMENDING SECTION 63-3021, IDAHO CODE, TO PROVIDE AD-  
2 DITIONAL PROVISIONS RELATING TO THE CALCULATION OF AN IDAHO NET OPERAT-  
3 ING LOSS DEDUCTION; AMENDING SECTION 63-3022, IDAHO CODE, TO PROVIDE A  
4 CORRECT CODE REFERENCE AND A TECHNICAL CORRECTION; DECLARING AN EMER-  
5 GENCY AND PROVIDING RETROACTIVE APPLICATION.  
6

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

8 SECTION 1. That Section 63-3021, Idaho Code, be, and the same is hereby  
9 amended to read as follows:

10 63-3021. NET OPERATING LOSS. (a) The term "net operating loss" means  
11 the amount by which Idaho taxable income, after making the modifications  
12 specified in subsection (b) of this section, is less than zero (0).

13 (b) Add the following amounts:

14 (1) The amount of any net operating loss deduction included in Idaho  
15 taxable income.

16 (2) The amount of the domestic production activities deduction allowed  
17 under section 199 of the Internal Revenue Code and included in Idaho  
18 taxable income.

19 (3) In the case of a taxpayer other than a corporation:

20 (i) Any amount deducted due to losses in excess of gains from sales  
21 or exchanges of capital assets; and

22 (ii) Any deduction for long-term capital gains provided by this  
23 chapter.

24 (34) Any deduction allowed under section 151 of the Internal Revenue  
25 Code (relating to personal exemption) or any deduction in lieu of any  
26 such deduction.

27 (45) Any deduction for the standard or itemized deductions provided for  
28 in section 63 of the Internal Revenue Code, or section 63-3022(j), Idaho  
29 Code, except for any deduction allowable under section 165(c)(3) of the  
30 Internal Revenue Code (relating to casualty losses) pertaining to prop-  
31 erty physically located inside Idaho at the time of the casualty.

32 (c) Subject to the provisions of sections 381 and 382, Internal Rev-  
33 enue Code, Idaho net operating losses incurred by a corporation will survive  
34 a merger.

35 (1) Changes in the location of a loss corporation's business or its key  
36 employees shall not be treated as a failure to satisfy the continuity of  
37 business requirements.

38 (2) If the premerger corporation conducted operations in Idaho and at  
39 least one (1) other state, the section 382, Internal Revenue Code, loss  
40 limitation is limited further by the premerger loss corporation's Idaho  
41 apportionment factor for the last taxable year preceding the date of the  
42 merger.

1 SECTION 2. That Section 63-3022, Idaho Code, be, and the same is hereby  
2 amended to read as follows:

3 63-3022. ADJUSTMENTS TO TAXABLE INCOME. The additions and subtrac-  
4 tions set forth in this section, and in sections 63-3022A through 63-3022R,  
5 Idaho Code, are to be applied to the extent allowed in computing Idaho tax-  
6 able income:

7 (a) Add any state and local taxes, as defined in section 164 of the In-  
8 ternal Revenue Code that are measured by net income, or for which a credit is  
9 allowable under section 63-3029, Idaho Code, and paid or accrued during the  
10 taxable year adjusted for state or local tax refunds used in arriving at tax-  
11 able income.

12 (b) Add the net operating loss deduction used in arriving at taxable in-  
13 come.

14 (c) (1) A net operating loss for any taxable year commencing on and af-  
15 ter January 1, 2000, but before January 1, 2013, shall be a net oper-  
16 ating loss carryback not to exceed a total of one hundred thousand dol-  
17 lars (\$100,000) to the two (2) immediately preceding taxable years. At  
18 the election of the taxpayer, the two (2) year carryback may be foregone  
19 and the loss subtracted from income received in taxable years arising in  
20 the next twenty (20) years succeeding the taxable year in which the loss  
21 arises in order until exhausted. The election shall be made as under  
22 section 172 (b) (3) of the Internal Revenue Code. An election under this  
23 subsection must be in the manner prescribed in the rules of the state tax  
24 commission and once made is irrevocable for the year in which it is made.

25 (2) A net operating loss for any taxable year commencing on or after  
26 January 1, 2013, shall be a net operating loss carryback not to exceed  
27 a total of one hundred thousand dollars (\$100,000) to the two (2) imme-  
28 diately preceding taxable years only if an amended return carrying the  
29 loss back is filed within one (1) year of the end of the taxable year of  
30 the net operating loss that results in such carryback.

31 (3) Any portion of the net operating loss not subtracted from income in  
32 the two (2) preceding years may be subtracted from income in the next  
33 twenty (20) years succeeding the taxable year in which the loss arises  
34 in order until exhausted. The sum of the deductions may not exceed the  
35 amount of the net operating loss deduction incurred. The carryback  
36 shall be limited to a total of fifty thousand dollars (\$50,000) in the  
37 case of an individual filing as married filing separate in the year of  
38 the loss.

39 (4) Net operating losses incurred by a corporation during a year in  
40 which such corporation did not transact business in Idaho or was not  
41 included in a group of corporations combined under subsection (t) of  
42 section 63-3027, Idaho Code, may not be subtracted. However, if at  
43 least one (1) corporation within a group of corporations combined under  
44 subsection (t) of section 63-3027, Idaho Code, was transacting business  
45 in Idaho during the taxable year in which the loss was incurred, then the  
46 net operating loss may be subtracted. Net operating losses incurred by  
47 a person, other than a corporation, in activities not taxable by Idaho  
48 may not be subtracted.

1 (5) The term "income" as used in this subsection ~~(e)~~ means Idaho taxable  
2 income as defined in this chapter as modified by section 63-3021(b) (2) ~~7~~  
3 ~~(3) and (4) through (5)~~, Idaho Code.

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

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

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

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

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

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

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

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

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

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

49 (2) Itemized deductions as defined in section 63 of the Internal Rev-  
50 enue Code except state or local taxes measured by net income and general

1 sales taxes as either is defined in section 164 of the Internal Revenue  
2 Code.

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

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

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

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

20 (o) In the case of an individual, add the amount of a nonqualified with-  
21 drawal from an individual trust account or savings account established pur-  
22 suant to chapter 54, title 33, Idaho Code, less any amount of such nonqual-  
23 ified withdrawal included in the individual's federal gross income pursuant  
24 to section 529 of the Internal Revenue Code.

25 (p) In the case of an individual, add the amount of a withdrawal from an  
26 individual trust account or savings account established pursuant to chapter  
27 54, title 33, Idaho Code, transferred to a qualified tuition program, as de-  
28 fined in section 529 of the Internal Revenue Code, that is operated by a state  
29 other than Idaho. The addition provided in this subsection is limited to the  
30 amount of the contributions to the Idaho individual trust account or savings  
31 account by the account owner that were deducted on the account owner's income  
32 tax return for the year of the transfer and the prior taxable year.

33 SECTION 3. An emergency existing therefor, which emergency is hereby  
34 declared to exist, this act shall be in full force and effect on and after its  
35 passage and approval, and retroactively to January 1, 2015.