

IN THE HOUSE OF REPRESENTATIVES

HOUSE BILL NO. 184

BY REVENUE AND TAXATION COMMITTEE

AN ACT

1 RELATING TO INCOME TAX; AMENDING SECTION 63-3022, IDAHO CODE, TO REVISE A
2 TIME PERIOD RELATING TO A NET OPERATING LOSS CARRYBACK, TO REMOVE LAN-
3 GUAGE RELATING TO NET OPERATING LOSS SUBTRACTED FROM INCOME, TO REMOVE
4 LANGUAGE DEFINING A TERM, TO ESTABLISH PROVISIONS RELATING TO A NET
5 OPERATING LOSS FOR ANY TAXABLE YEAR COMMENCING ON OR AFTER JANUARY 1,
6 2013, TO ESTABLISH PROVISIONS RELATING TO THE SUBTRACTION OF A PORTION
7 OF A NET OPERATING LOSS, TO DEFINE A TERM AND TO MAKE A TECHNICAL COR-
8 RECTION; AMENDING SECTION 63-3072, IDAHO CODE, TO REVISE PROVISIONS
9 RELATING TO A CLAIM FOR CREDIT OR REFUND THAT RELATES TO AN OVERPAY-
10 MENT ATTRIBUTABLE TO A NET OPERATING LOSS CARRYBACK AND TO PROVIDE THAT
11 CERTAIN CLAIMS FOR NET OPERATING LOSSES SHALL BE MADE PURSUANT TO LAW;
12 DECLARING AN EMERGENCY AND PROVIDING RETROACTIVE APPLICATION.
13

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

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

17 63-3022. ADJUSTMENTS TO TAXABLE INCOME. The additions and subtrac-
18 tions set forth in this section, and in sections 63-3022A through 63-3022Q,
19 Idaho Code, are to be applied to the extent allowed in computing Idaho tax-
20 able income:

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

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

27 (c) (1) A net operating loss for any taxable year commencing on and
28 after January 1, 2000, but before January 1, 2013, shall be a net op-
29 erating loss carryback not to exceed a total of one hundred thousand
30 dollars (\$100,000) to the two (2) immediately preceding taxable years.
31 ~~Any portion of the net operating loss not subtracted from income in the~~
32 ~~two (2) preceding years may be subtracted from income in the next twenty~~
33 ~~(20) years succeeding the taxable year in which the loss arises in order~~
34 ~~until exhausted. The sum of the deductions may not exceed the amount~~
35 ~~of the net operating loss deduction incurred. At the election of the~~
36 ~~taxpayer, the two (2) year carryback may be foregone and the loss sub-~~
37 ~~tracted from income received in taxable years arising in the next twenty~~
38 (20) years succeeding the taxable year in which the loss arises in order
39 until exhausted. The election shall be made as under section 172 (b) (3)
40 of the Internal Revenue Code. An election under this subsection must
41 be in the manner prescribed in the rules of the state tax commission
42 and once made is irrevocable for the year in which it is made. ~~The term~~

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

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

10 (3) Any portion of the net operating loss not subtracted from income
11 in the two (2) preceding years may be subtracted from income in the next
12 twenty (20) years succeeding the taxable year in which the loss arises
13 in order until exhausted. The sum of the deductions may not exceed the
14 amount of the net operating loss deduction incurred.

15 (4) Net operating losses incurred by a corporation during a year in
16 which such corporation did not transact business in Idaho or was not
17 included in a group of corporations combined under subsection (t) of
18 section 63-3027, Idaho Code, may not be subtracted. However, if at
19 least one (1) corporation within a group of corporations combined under
20 subsection (t) of section 63-3027, Idaho Code, was transacting business
21 in Idaho during the taxable year in which the loss was incurred, then the
22 net operating loss may be subtracted. Net operating losses incurred by
23 a person, other than a corporation, in activities not taxable by Idaho
24 may not be subtracted.

25 (5) The term "income" as used in this subsection (c) means Idaho taxable
26 income as defined in this chapter as modified by section 63-3021(b) (2),
27 (3) and (4), Idaho Code.

28 (d) In the case of a corporation, add the amount deducted under the pro-
29 visions of sections 243(a) and (c), 244, 245 and 246A of the Internal Revenue
30 Code (relating to dividends received by corporations) as limited by section
31 246(b) (1) of said code.

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

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

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

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

42 (2) Net operating losses attributable to a beneficiary of a trust or es-
43 tate under section 642 of the Internal Revenue Code shall be a deduction
44 for the beneficiary to the extent that income from the trust or estate
45 would be attributable to this state under the provisions of this chap-
46 ter.

47 (h) In the case of an individual who is on active duty as a full-time
48 officer, enlistee or draftee, with the armed forces of the United States,
49 which full-time duty is or will be continuous and uninterrupted for one hun-
50 dred twenty (120) consecutive days or more, deduct compensation paid by the

1 armed forces of the United States for services performed outside this state.
2 The deduction is allowed only to the extent such income is included in tax-
3 able income.

4 (i) In the case of a corporation, including any corporation included
5 in a group of corporations combined under subsection (t) of section 63-3027,
6 Idaho Code, add any capital loss or passive loss deducted which loss was in-
7 curred during any year in which such corporation did not transact business in
8 Idaho. However, do not add any capital loss deducted if a corporation, in-
9 cluding any corporation in a group of corporations combined under subsection
10 (t) of section 63-3027, Idaho Code, was transacting business in Idaho dur-
11 ing the taxable year in which the loss was incurred. In the case of persons,
12 other than corporations, add any capital loss or passive loss deducted which
13 was incurred in activities not taxable by Idaho at the time such loss was in-
14 curred. In computing the income taxable to an S corporation or partnership
15 under this section, deduction shall not be allowed for a carryover or carry-
16 back of a net operating loss provided for in subsection (c) of this section
17 or a capital loss or passive loss provided for in section 1212 of the Internal
18 Revenue Code.

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

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

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

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

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

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

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

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

49 (p) In the case of an individual, add the amount of a withdrawal from an
50 individual trust account or savings account established pursuant to chapter

1 54, title 33, Idaho Code, transferred to a qualified tuition program, as de-
2 fined in section 529 of the Internal Revenue Code, that is operated by a state
3 other than Idaho. The addition provided in this subsection is limited to the
4 amount of the contributions to the Idaho individual trust account or savings
5 account by the account owner that were deducted on the account owner's income
6 tax return for the year of the transfer and the prior taxable year.

7 SECTION 2. That Section 63-3072, Idaho Code, be, and the same is hereby
8 amended to read as follows:

9 63-3072. CREDITS AND REFUNDS. (a) Subject to the provisions of subsec-
10 tions (b), (c) and (h) of this section, where there has been an overpayment
11 of the tax imposed by the provisions of this chapter, the amount of such over-
12 payment shall be credited against any tax administered by the state tax com-
13 mission which tax is then due from the taxpayer, and any balance of such ex-
14 cess shall be refunded to the taxpayer.

15 (b) Except in regard to amounts withheld as provided in section
16 63-3035, 63-3035A or 63-3036, Idaho Code, or amounts paid as estimated pay-
17 ments under section 63-3036A, Idaho Code, a claim for credit or refund of
18 tax, penalties, or interest paid shall be made within the later of three (3)
19 years of the due date of the return, without regard to extensions, or three
20 (3) years from the date the return was filed. However, with regard to remit-
21 tances received with an extension of time to file, or a tentative return, a
22 claim for credit or refund of such remittances shall be made within three (3)
23 years from the due date of the return without regard to extensions.

24 (c) With regard to amounts withheld as provided in section 63-3035,
25 63-3035A or 63-3036, Idaho Code, or amounts paid as estimated payments un-
26 der section 63-3036A, Idaho Code, a claim for credit or refund shall be made
27 within three (3) years from the due date of the return, without regard to
28 extensions, for the taxable year in respect to which the tax was withheld or
29 paid. However, with regard to an individual who is entitled to an extension
30 of time as provided in section 7508 of the Internal Revenue Code, the three
31 (3) year period provided in this subsection for claiming a credit or refund
32 shall be extended by the number of days disregarded under section 7508 of the
33 Internal Revenue Code.

34 (d) Notwithstanding any other provisions of this section, when Idaho
35 taxable income and/or tax credits for any taxable year have been adjusted
36 as a result of a final federal determination, the period of limitations for
37 claiming a refund or credit of tax, penalties, or interest shall be reopened
38 and shall not expire until the later of one (1) year from the date of deliv-
39 ery of the final federal determination to the taxpayer by the internal rev-
40 enue service, three (3) years from the due date of the return, without regard
41 to extensions, or three (3) years from the date the return was filed. For
42 purposes of this subsection, the term "final federal determination" shall
43 mean the final resolution of all issues which were adjusted by the inter-
44 nal revenue service. When the final federal determination is submitted, the
45 taxpayer shall also submit copies of all schedules and written explanations
46 provided by the internal revenue service. Upon the expiration of the period
47 of limitations as provided in subsections (b) and (h) of this section, only
48 those specific items of income, deductions, gains, losses or credits which
49 were adjusted in the final federal determination shall be subject to adjust-

1 ment for purposes of recomputing Idaho income, deductions, gains, losses,
2 credits, and the effect of such adjustments on Idaho allocations and appor-
3 tionments.

4 (e) If a claim for credit or refund relates to an overpayment attribut-
5 able to a net operating loss carryback incurred in a taxable year commencing
6 in 2012 or earlier, or a capital loss carryback, in lieu of the period of lim-
7 itations prescribed in subsection (b) of this section, the period shall be
8 that period which ends with the expiration of the fifteenth day of the for-
9 tieth month following the end of the taxable year of the net operating loss
10 or capital loss which results in such carryback. Claims for net operating
11 losses carried back from taxable years commencing after 2012 shall be made
12 pursuant to section 63-3022, Idaho Code.

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

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

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

42 (k) For purposes of this section, "return" includes a notice of defi-
43 ciency determination issued by the state tax commission when no return was
44 filed by the taxpayer. Such a return is deemed filed on the date the taxes de-
45 termined by the state tax commission are assessed.

46 SECTION 3. An emergency existing therefor, which emergency is hereby
47 declared to exist, this act shall be in full force and effect on and after its
48 passage and approval, and retroactively to January 1, 2013.