

IN THE HOUSE OF REPRESENTATIVES

HOUSE BILL NO. 295

BY REVENUE AND TAXATION COMMITTEE

AN ACT

1 RELATING TO INCOME TAXES; AMENDING CHAPTER 30, TITLE 63, IDAHO CODE, BY
2 THE ADDITION OF A NEW SECTION 63-3026B, IDAHO CODE, TO PROVIDE FOR THE
3 TREATMENT OF STATE AND LOCAL TAXATION DEDUCTIONS FOR AFFECTED BUSINESS
4 ENTITIES; AND DECLARING AN EMERGENCY AND PROVIDING RETROACTIVE APPLI-
5 CATION.
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7 Be It Enacted by the Legislature of the State of Idaho:

8 SECTION 1. That Chapter 30, Title 63, Idaho Code, be, and the same is
9 hereby amended by the addition thereto of a NEW SECTION, to be known and des-
10 ignated as Section 63-3026B, Idaho Code, and to read as follows:

11 63-3026B. AFFECTED BUSINESS ENTITIES -- STATE AND LOCAL TAXATION
12 TREATMENT. (1) As used in this section:

13 (a) "Affected business entity" means any partnership or S corporation
14 that elects to be subject to tax pursuant to this section.

15 (b) "Direct member" means a member that holds an interest directly in an
16 affected business entity.

17 (c) "Indirect member" means a member that itself holds an interest,
18 through a direct or indirect member that is a partnership or S corpora-
19 tion, in an affected business entity.

20 (d) "Member" means:

21 (i) A shareholder of an S corporation;

22 (ii) A partner in a general partnership, a limited partnership, or
23 a limited liability partnership; or

24 (iii) A member of a limited liability company that is treated as a
25 partnership or an S corporation for federal income tax purposes.

26 (e) "Partnership" has the meaning provided in section 63-3006B, Idaho
27 Code. "Partnership" includes a limited liability company that is
28 treated as a partnership for federal income tax purposes as described in
29 section 63-3006A, Idaho Code.

30 (f) "S corporation" means a corporation or limited liability company
31 that is treated as an S corporation for federal income tax purposes.

32 (g) "Taxable year" means the taxable year of a partnership or an S cor-
33 poration for federal income tax purposes.

34 (2) (a) A partnership or an S corporation may elect in the manner set
35 forth in this section to become an affected business entity required to
36 pay the tax under this section in any taxable year. A separate election
37 must be made for each taxable year.

38 (b) An election under this section must be made on a form and in the man-
39 ner as the state tax commission prescribes by rule or instruction.

40 (c) An election under this section may be made for any taxable year by
41 filing the election with a timely filed original return for such taxable
42 year.

1 (d) An election made under this section must be signed by:

2 (i) Each member of the electing entity who is a member at the time
3 the election is filed; or

4 (ii) Any officer, manager, or member of the electing entity who is
5 authorized under local law or by the entity's organizational docu-
6 ments to make the election and who represents under penalty of per-
7 jury that he has such authorization.

8 (3) Each affected business entity that is a partnership or an S corpora-
9 tion transacting business in this state shall, on or before April 15 follow-
10 ing the close of each taxable year, pay a tax in an amount determined as fol-
11 lows:

12 (a) Add the separately and nonseparately computed items as described
13 in section 702(a) of the Internal Revenue Code for a partnership, or
14 as described in section 1366 of the Internal Revenue Code for an S cor-
15 poration, to the extent derived from or connected with sources within
16 this state, as determined under the provisions of sections 63-3026 and
17 63-3026A, Idaho Code;

18 (b) Subtract from the sum in paragraph (a) of this subsection the deduc-
19 tion allowed under section 199A of the Internal Revenue Code computed as
20 if such deduction were allowed to be taken by the affected business en-
21 tity for federal tax purposes;

22 (c) Increase or decrease the result from paragraph (b) of this sub-
23 section according to the modifications permitted under this chapter
24 that relate to an item of the affected business entity's income, gain,
25 loss, or deduction, to the extent derived from or connected with sources
26 within this state, as determined under the provisions of sections
27 63-3026 and 63-3026A, Idaho Code; and

28 (d) Multiply the result from paragraph (c) of this subsection by the
29 tax rate applicable to corporations provided in section 63-3025, Idaho
30 Code.

31 (4) If the amount calculated under subsection (3) (c) of this section
32 results in a net loss, such net loss may be carried forward to succeeding tax-
33 able years for which the affected business entity elects to be subject to tax
34 pursuant to this section until fully used.

35 (5) If an affected business entity is a direct or indirect member of an-
36 other affected business entity, the member affected business entity shall,
37 when calculating its net income or loss pursuant to subsection (3) (c) of this
38 section, subtract its distributive share of income or add its distributive
39 share of loss from the affected business entity in which it is a direct or in-
40 direct member to the extent that the income or loss was derived from or con-
41 nected with sources within this state.

42 (6) A nonresident individual who is a member is not required to file an
43 income tax return under section 63-3030, Idaho Code, for any taxable year in
44 which the only source of income derived from or connected with sources within
45 the state for such member, or the member and the member's spouse if a joint
46 federal income tax return is or shall be filed, is from one (1) or more af-
47 fected business entities and such affected business entity or entities file
48 and pay the tax due under this section.

49 (7) Each partnership and S corporation shall report to each of its mem-
50 bers, for each taxable year, such member's direct pro rata share of the tax

1 imposed under this section on such partnership or S corporation if it is an
2 affected business entity and its indirect pro rata share of the tax imposed
3 on any affected business entity in which such affected business entity is a
4 direct or indirect member.

5 (8) (a) Each individual who is a member and is subject to tax under sec-
6 tion 63-3024, Idaho Code, is entitled to a credit against such tax. The
7 credit will be in an amount equal to the individual's direct and indi-
8 rect pro rata share of the tax paid under this section by any affected
9 business entity of which the individual is a direct or indirect member.
10 If the amount of the credit allowed pursuant to this paragraph exceeds
11 the individual's tax liability for the tax imposed under this chapter,
12 the individual will be paid a refund equal to the balance of the unused
13 credit.

14 (b) Each individual who is a member and is subject to the tax under
15 section 63-3024, Idaho Code, as a resident or a part-year resident of
16 this state is entitled to a credit against such tax for the individual's
17 direct and indirect pro rata share of taxes paid to another state of the
18 United States or the District of Columbia, on income of any partnership
19 or S corporation of which the individual is a member that is derived
20 therefrom, provided the taxes paid to another state of the United States
21 or the District of Columbia results from a tax that the state tax commis-
22 sion determines is substantially similar to the tax imposed under this
23 section. Any such credit will be calculated in the manner prescribed
24 by the state tax commission and shall be consistent with the provisions
25 of section 63-3029, Idaho Code. If the amount of the credit allowed
26 pursuant to this paragraph exceeds the individual's tax liability for
27 the tax imposed under this chapter, the individual will be paid a refund
28 equal to the balance of the unused credit.

29 (9) Each corporation that is a member and is subject to the tax im-
30 posed under section 63-3025 or 63-3025A, Idaho Code, is entitled to a credit
31 against such tax. The credit will be in an amount equal to the corporation's
32 direct and indirect pro rata share of the tax paid under this section by any
33 affected business entity of which the corporation is a member. Such credit
34 will be applied after all other applicable credits have been applied. Any
35 balance of the credit that is not used in the taxable year during which the
36 corporation reports the net income from such affected business entities will
37 be paid as a refund to the corporation.

38 (10) The penalty and interest provisions and the collection and en-
39 forcement procedures provided by sections 63-3038 through 63-3040, 63-3042
40 through 63-3065A, 63-3071, 63-3075, and 63-3078, Idaho Code, shall apply and
41 be available to the state tax commission for enforcement of the provisions of
42 this section and collection of any amounts due under this section. Said sec-
43 tions shall, for this purpose, be considered part of this section, and wher-
44 ever liens or any other proceedings are defined as income tax liens or pro-
45 ceedings, they shall, when applied in enforcement or collection under this
46 section, be described as affected business entity tax liens and proceedings.

47 SECTION 2. An emergency existing therefor, which emergency is hereby
48 declared to exist, this act shall be in full force and effect on and after its
49 passage and approval, and retroactively to January 1, 2021.