

IN THE HOUSE OF REPRESENTATIVES

HOUSE BILL NO. 388

BY REVENUE AND TAXATION COMMITTEE

AN ACT

RELATING TO INCOME TAX; AMENDING SECTION 63-3022H, IDAHO CODE, TO PROVIDE A DEFINITION OF "REAL PROPERTY"; AMENDING SECTION 63-3029E, IDAHO CODE, TO REVISE THE DEFINITION OF "REVENUE-PRODUCING ENTERPRISE"; DECLARING AN EMERGENCY AND PROVIDING RETROACTIVE APPLICATION.

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

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

63-3022H. DEDUCTION OF CAPITAL GAINS. (1) If an individual taxpayer reports capital gain net income in determining taxable income, eighty percent (80%) in taxable year 2001 and sixty percent (60%) in taxable years thereafter of the capital gain net income from the sale or exchange of qualified property shall be a deduction in determining Idaho taxable income.

(2) The deduction provided in this section is limited to the amount of the capital gain net income from all property included in taxable income. Gains treated as ordinary income by the Internal Revenue Code do not qualify for the deduction allowed in this section. The deduction otherwise allowable under this section shall be reduced by the amount of any federal capital gains deduction relating to such property, but not below zero.

(3) Property held by an estate, trust, S corporation, partnership, limited liability company or an individual is "qualified property" under this section if the property had an Idaho situs at the time of sale and is:

(a) Real property held at least twelve (12) months;

(b) Tangible personal property used in Idaho for at least twelve (12) months by a revenue-producing enterprise;

(c) Cattle or horses held for breeding, draft, dairy or sporting purposes for at least twenty-four (24) months if more than one-half (1/2) of the taxpayer's gross income (as defined in section 61(a) of the Internal Revenue Code) for the taxable year is from farming or ranching operations in Idaho;

(d) Breeding livestock other than cattle or horses held at least twelve (12) months if more than one-half (1/2) of the taxpayer's gross income (as defined in section 61(a) of the Internal Revenue Code) for the taxable year is from farming or ranching operations in Idaho;

(e) Timber grown in Idaho and held at least twenty-four (24) months;

(f) In determining the period for which property subject to this section has been held by a taxpayer, the provisions of section 1223 of the Internal Revenue Code shall apply, except that the holding period shall not include the holding period of property given up in an exchange, when such property would not have constituted qualified property under this section without regard to meeting the holding period nor shall the holding period include any time period in which the

1 property subject to this section was held by a corporation other than an
2 S corporation.

3 (4) As used in this section "revenue-producing enterprise" means:

4 (a) The production, assembly, fabrication, manufacture, or processing
5 of any agricultural, mineral or manufactured product;

6 (b) The storage, warehousing, distribution, or sale at wholesale of any
7 products of agriculture, mining or manufacturing;

8 (c) The feeding of livestock at a feedlot;

9 (d) The operation of laboratories or other facilities for scientific,
10 agricultural, animal husbandry, or industrial research, development,
11 or testing.

12 (5) As used in this section the term "real property" means land and
13 other tangible property permanently upon or affixed to the land.

14 SECTION 2. That Section 63-3029E, Idaho Code, be, and the same is hereby
15 amended to read as follows:

16 63-3029E. DEFINITIONS -- CONSTRUCTION OF TERMS. As used in this
17 section and in section 63-3029F, Idaho Code:

18 (1) (a) "New employee" means a person subject to Idaho income tax
19 withholding whether or not any amounts are required to be withheld,
20 employed by the taxpayer in a trade or business, and covered for
21 unemployment insurance purposes under chapter 13, title 72, Idaho
22 Code, during the taxable year for which the credit allowed by section
23 63-3029F, Idaho Code, is claimed. A person shall be deemed to be so
24 engaged if such person performs duties on:

25 (i) A regular full-time basis; or

26 (ii) A part-time basis if such person is customarily performing
27 such duties at least twenty (20) hours per week.

28 No credit shall be earned unless the new employee shall have performed
29 such duties for the taxpayer for a minimum of nine (9) months during the
30 taxable year for which the credit is claimed.

31 (b) The provisions of paragraph (a) of this subsection
32 notwithstanding, no credit shall be allowed for employment of
33 persons by a taxpayer who acquires a trade or business from another
34 taxpayer or who operates in a place of business the same or a
35 substantially identical trade or business as operated by another
36 taxpayer within the prior twelve (12) months, except as the prior
37 taxpayer would have qualified under the provisions of paragraph (c) of
38 this subsection. Employees transferred from a related taxpayer shall
39 not be included in the computation of the credit.

40 (c) The number of employees during any taxable year for any taxpayer
41 shall be the mathematical average of the number of employees reported
42 to the Idaho department of labor for employment security purposes
43 during the twelve (12) months of the taxable year which qualified
44 under paragraph (a) of this subsection. In the event the business
45 is in operation for less than the entire taxable year, the number of
46 employees of the business for the year shall be the average number
47 actually employed during the months of operation, providing that the
48 qualifications of paragraph (a) of this subsection are met.

1 (2) "Revenue-producing enterprise" ~~means the production, assembly,~~
2 ~~fabrication, manufacture or processing of any natural resource product~~
3 shall be as defined in section 63-3022H, Idaho Code.

4 (3) "Same or a substantially identical trade or business" means a
5 trade or business in which the products produced or sold, or the activities
6 conducted are the same in character and use and are produced, sold or
7 conducted in the same manner as, or for the same types of customers as,
8 the products or activities produced, sold or conducted in another trade or
9 business.

10 SECTION 3. An emergency existing therefor, which emergency is hereby
11 declared to exist, this act shall be in full force and effect on and after its
12 passage and approval, and retroactively to January 1, 2010.