

IN THE HOUSE OF REPRESENTATIVES

HOUSE BILL NO. 390

BY WAYS AND MEANS COMMITTEE

AN ACT

1 RELATING TO TAXATION; AMENDING SECTION 63-3022, IDAHO CODE, AS AMENDED IN
2 SECTION 1 OF HOUSE BILL NO. 251, AS ENACTED BY THE FIRST REGULAR SESSION
3 OF THE SIXTY-SIXTH IDAHO LEGISLATURE, TO REVISE PROVISIONS REGARDING
4 THE EXCLUSION OF CERTAIN EMERGENCY RENTAL ASSISTANCE FROM TAXABLE IN-
5 COME; AMENDING SECTION 63-102, IDAHO CODE, TO REVISE PROVISIONS REGARD-
6 ING THE POWERS AND DUTIES OF THE STATE TAX COMMISSION; PROVIDING LEG-
7 ISLATIVE INTENT; AND DECLARING AN EMERGENCY, PROVIDING RETROACTIVE AP-
8 PPLICATION, AND PROVIDING EFFECTIVE DATES.
9

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

11 SECTION 1. That Section 63-3022, Idaho Code, as amended in Section 1 of
12 House Bill No. 251, as enacted by the First Regular Session of the Sixty-
13 sixth Idaho Legislature, be, and the same is hereby amended to read as fol-
14 lows:

15 63-3022. ADJUSTMENTS TO TAXABLE INCOME. The additions and subtrac-
16 tions set forth in this section, and in sections 63-3022A through 63-3022U,
17 Idaho Code, are to be applied to the extent allowed in computing Idaho tax-
18 able income:

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

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

26 (c) (1) A net operating loss for any taxable year commencing on and af-
27 ter January 1, 2000, but before January 1, 2013, shall be a net oper-
28 ating loss carryback not to exceed a total of one hundred thousand dol-
29 lars (\$100,000) to the two (2) immediately preceding taxable years. At
30 the election of the taxpayer, the two (2) year carryback may be forgone
31 and the loss subtracted from income received in taxable years arising in
32 the next twenty (20) years succeeding the taxable year in which the loss
33 arises in order until exhausted.

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

40 (3) Any portion of the net operating loss not subtracted from income in
41 the two (2) preceding years may be subtracted from income in the next
42 twenty (20) years succeeding the taxable year in which the loss arises

1 in order until exhausted. The sum of the deductions may not exceed the
2 amount of the net operating loss deduction incurred. The carryback
3 shall be limited to a total of fifty thousand dollars (\$50,000) in the
4 case of an individual filing as married filing separate in the year of
5 the loss.

6 (4) Net operating losses incurred by a corporation during a year in
7 which such corporation did not transact business in Idaho or was not
8 included in a group of corporations combined under subsection (t) of
9 section 63-3027, Idaho Code, may not be subtracted. However, if at
10 least one (1) corporation within a group of corporations combined under
11 subsection (t) of section 63-3027, Idaho Code, was transacting business
12 in Idaho during the taxable year in which the loss was incurred, then the
13 net operating loss may be subtracted. Net operating losses incurred by
14 a person, other than a corporation, in activities not taxable by Idaho
15 may not be subtracted.

16 (5) The term "income" as used in this subsection means Idaho taxable in-
17 come as defined in this chapter as modified by section 63-3021(b) (2),
18 (3) and (4), Idaho Code.

19 (d) In the case of a corporation, add the amount deducted under the pro-
20 visions of sections 243(a) and (c), 244, 245, and 246A of the Internal Rev-
21 enue Code (relating to dividends received by corporations and other special
22 deductions) as limited by section 246(b) (1) of said code.

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

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

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

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

33 (2) Net operating losses attributable to a beneficiary of a trust or es-
34 tate under section 642 of the Internal Revenue Code shall be a deduction
35 for the beneficiary to the extent that income from the trust or estate
36 would be attributable to this state under the provisions of this chap-
37 ter.

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

45 (i) In the case of a corporation, including any corporation included
46 in a group of corporations combined under subsection (t) of section 63-3027,
47 Idaho Code, add any capital loss or passive loss deducted which loss was in-
48 curred during any year in which such corporation did not transact business in
49 Idaho. However, do not add any capital loss deducted if a corporation, in-
50 cluding any corporation in a group of corporations combined under subsection

1 (t) of section 63-3027, Idaho Code, was transacting business in Idaho dur-
2 ing the taxable year in which the loss was incurred. In the case of persons
3 other than corporations, add any capital loss or passive loss deducted which
4 was incurred in activities not taxable by Idaho at the time such loss was in-
5 curred. In computing the income taxable to an S corporation or partnership
6 under this section, deduction shall not be allowed for a carryover or carry-
7 back of a net operating loss provided for in subsection (c) of this section,
8 a passive loss or a capital loss provided for in section 1212 of the Internal
9 Revenue Code.

10 (j) In the case of an individual, there shall be allowed as a deduction
11 from gross income either paragraph (1) or (2) of this subsection at the op-
12 tion of the taxpayer:

13 (1) The standard deduction as defined in section 63 of the Internal Rev-
14 enue Code.

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

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

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

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

29 (n) In the case of an individual for any tax period ending on or prior
30 to December 31, 2016, deduct the amount contributed to a college savings pro-
31 gram but not more than four thousand dollars (\$4,000) per tax year. In the
32 case of an individual and for any tax period starting on or after January 1,
33 2017, deduct the amount contributed to a college savings program, but not
34 more than six thousand dollars (\$6,000) per tax year. For those married and
35 filing jointly, deduct the amount contributed to a college savings program,
36 but not more than twice of that allowed for an individual. To be qualified
37 for this deduction, the contribution must be made during the taxable year and
38 made to an Idaho college savings program account as described in chapter 54,
39 title 33, Idaho Code.

40 (o) In the case of an individual, add the amount of a nonqualified with-
41 drawal from an individual trust account or savings account established pur-
42 suant to chapter 54, title 33, Idaho Code, less any amount of such nonqual-
43 ified withdrawal included in the individual's federal gross income pursuant
44 to section 529 of the Internal Revenue Code. The addition provided in this
45 subsection is limited to contributions previously exempt from Idaho state
46 income tax and earnings generated from the program as long as the earnings
47 are not already included in federal adjusted gross income.

48 (p) In the case of an individual, add the amount of a withdrawal from
49 an individual trust account or savings account established pursuant to chap-
50 ter 54, title 33, Idaho Code, transferred to a qualified tuition program, as

1 defined in section 529 of the Internal Revenue Code, that is operated by a
 2 state other than Idaho or to a qualified ABLE program as defined in section
 3 529A of the Internal Revenue Code. The addition provided in this subsection
 4 is limited to the amount of the contributions to the Idaho individual trust
 5 account or savings account by the account owner that was deducted on the ac-
 6 count owner's Idaho income tax return for the year of the transfer and the
 7 prior taxable year.

8 (q) Deduct any amount disallowed under section 461(l)(1)(B) of the In-
 9 ternal Revenue Code (relating to excess business losses) that is treated as
 10 part of the taxpayer's net operating loss carryforward for federal income
 11 tax purposes.

12 (r) Subtract any amounts included in taxable income for funds received
 13 or loans forgiven pursuant to the provisions of the coronavirus aid, relief,
 14 and economic security act, P.L. 116-136.

15 (s) Subtract any amounts included in taxable income for loans forgiven
 16 pursuant to the paycheck protection program and health care enhancement act,
 17 P.L. 116-139, including economic injury disaster loan advance funds, and the
 18 paycheck protection program flexibility act of 2020, P.L. 116-142.

19 (t) Add any amounts excluded from taxable income for funds received
 20 pursuant to the emergency rental assistance program established by sec-
 21 tion 501 of division N of the consolidated appropriations act, 2021, P.L.
 22 116-260, except that such funds provided directly to a member of an eligible
 23 household for the purpose of making payments to a lessor or utility provider
 24 are not required to be added back to taxable income.

25 SECTION 2. That Section 63-102, Idaho Code, be, and the same is hereby
 26 amended to read as follows:

27 63-102. ORGANIZATION -- CHAIRMAN -- COMPENSATION -- QUORUM -- HEAR-
 28 INGS. (1) A member of the state tax commission shall be appointed by the gov-
 29 ernor, to serve at his pleasure, as chairman. Each member of the state tax
 30 commission shall devote full time to the performance of duties. Commencing
 31 on July 1, 2020, the annual salary for members of the state tax commission
 32 shall be one hundred four thousand ninety dollars (\$104,090).

33 (2) A majority of the state tax commission shall constitute a quorum for
 34 the transaction of business. The state tax commission may delegate to any
 35 member of the commission or to its employees, the power to make investiga-
 36 tions and hold hearings at any place it may deem proper, and such other mat-
 37 ters as will facilitate the operations of the commission.

38 (3) The chairman of the state tax commission shall delegate to each com-
 39 missioner the responsibility for policy management and oversight of one (1)
 40 or more of the taxes collected and/or activities supervised or administered
 41 by the commission. The state tax commission shall perform the duties imposed
 42 upon it by law and shall adopt all rules by majority decision.

43 (4) In any case in which the state tax commission sits as an appellate
 44 body upon an appeal from a tax decision from one (1) of the various adminis-
 45 trative units subject to its supervision, the state tax commissioner charged
 46 with responsibility for policy management and oversight of the tax in con-
 47 troversy shall not vote upon the appeal but may advise the remaining members
 48 of the commission on the technical aspects of the problems before them.

1 (45) The chairman shall be the chief executive officer and administra-
2 tive head of the state tax commission and shall be responsible for, ~~or,~~ with
3 the advice and consent of the state tax commission, may assign responsibil-
4 ity for, all personnel, budgetary, and/or fiscal matters of the state tax
5 commission. Actions of the chairman or state tax commission staff may be
6 reviewed by the state tax commission upon the request of a commissioner to
7 place the decision item on the agenda for a vote of the commission. The deci-
8 sion of the chairman or staff shall be sustained upon an affirmative vote of a
9 majority of the state tax commission.

10 SECTION 3. LEGISLATIVE INTENT. It is the intent of the Legislature to
11 clarify the democratic authority of the State Tax Commission and to affirm
12 that control of the State Tax Commission is by the majority of its members.
13 The Legislature finds that it is important to instill trust and accountabil-
14 ity in tax collection, auditing, and other program responsibilities at the
15 State Tax Commission. The Legislature intends that the chairman of the State
16 Tax Commission shall be responsible for the day-to-day administrative func-
17 tions of the commission and that individual commissioners shall be respon-
18 sible for policy management of one or more of the taxes collected by the com-
19 mission in addition to oversight of other activities supervised or adminis-
20 tered by the commission. This keeps the commissioners free to dedicate their
21 time and expertise to ensuring the predictable, consistent, and fair appli-
22 cation of tax law to Idaho's taxpayers. The bipartisan State Tax Commission
23 may review and approve of the decisions of the chairman and commission staff
24 without forcing any commissioner to be unnecessarily involved in the admin-
25 istrative decision-making process. In operating the State Tax Commission in
26 a way that supports Idaho citizens and businesses, commissioners should not
27 be permitted to interfere with the chairman's obligations as chief executive
28 and administrative head of the State Tax Commission while still fulfilling
29 the responsibility to act by majority and to provide organizational account-
30 ability to the taxpayers of the State of Idaho.

31 SECTION 4. An emergency existing therefor, which emergency is hereby
32 declared to exist, Section 1 of this act shall be in full force and effect
33 on and after passage and approval, and retroactively to January 1, 2021, and
34 Sections 2 and 3 of this act shall be in full force and effect on and after
35 passage and approval.