

IN THE HOUSE OF REPRESENTATIVES

HOUSE BILL NO. 558

BY REVENUE AND TAXATION COMMITTEE

AN ACT

1 RELATING TO INCOME TAXES; AMENDING SECTION 63-3004, IDAHO CODE, TO PROVIDE  
2 FOR APPLICABILITY OF THE INTERNAL REVENUE CODE TO DIFFERENT TAX YEARS;  
3 AMENDING CHAPTER 30, TITLE 63, IDAHO CODE, BY THE ADDITION OF A NEW  
4 SECTION 63-3021B, IDAHO CODE, TO ALLOW A CARRYFORWARD TO A TAXPAYER FOR  
5 CERTAIN AMOUNTS DISALLOWED IN THE CALCULATION OF NEXT TAXABLE INCOME;  
6 AMENDING SECTION 63-3022, IDAHO CODE, TO REVISE THE CALCULATION OF  
7 IDAHO TAXABLE INCOME FOR CORPORATIONS, TO REMOVE A PROVISION REGARDING  
8 A TAXPAYER ELECTION, TO ADD AMOUNTS DEDUCTED UNDER THE PROVISIONS OF  
9 THE INTERNAL REVENUE CODE, TO PROVIDE AN INDIVIDUAL DEDUCTION FOR EACH  
10 DEPENDENT OF THE TAXPAYER, TO DEFINE A TERM AND TO PROVIDE FOR AN INFLA-  
11 TION ADJUSTMENT; AMENDING SECTION 63-3024, IDAHO CODE, TO REDUCE THE  
12 INDIVIDUAL INCOME TAX RATE AND TO MAKE TECHNICAL CORRECTIONS; AMENDING  
13 SECTION 63-3025, IDAHO CODE, TO REDUCE THE CORPORATE INCOME TAX RATE;  
14 AMENDING SECTION 33-5401, IDAHO CODE, TO REVISE A DEFINITION AND TO  
15 REVISE A TAX CODE CITATION; AND DECLARING AN EMERGENCY AND PROVIDING  
16 RETROACTIVE APPLICATION.  
17

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

19 SECTION 1. That Section 63-3004, Idaho Code, be, and the same is hereby  
20 amended to read as follows:

21 63-3004. INTERNAL REVENUE CODE. (a) The term "Internal Revenue Code"  
22 means, for taxable years beginning on any day of 2017, the Internal Revenue  
23 Code of 1986 of the United States, as amended, and in effect on the twenty-  
24 first day of January December 2017, except that Internal Revenue Code sec-  
25 tions 965 and 213 are applied as in effect on December 31, 2017.

26 ~~(b) Provisions of the Internal Revenue Code amended, deleted, or added~~  
27 ~~prior to the effective date of the latest amendment to this section shall be~~  
28 ~~applicable for Idaho income tax purposes on the effective date provided for~~  
29 ~~such amendments, deletions, or additions, including retroactive provisions~~  
30 The term "Internal Revenue Code" means, for taxable years beginning on or  
31 after the first day of January 2018, the Internal Revenue Code of 1986, as  
32 amended, and in effect on the first day of January 2018.

33 (c) For all purposes of the Idaho income tax act, a marriage must be one  
34 that is considered valid or recognized under section 28, article III, of the  
35 constitution of the state of Idaho and defined in section 32-201, Idaho Code,  
36 or as recognized under section 32-209, Idaho Code.

37 (d) Notwithstanding subsection (c) of this section, marriages recog-  
38 nized and permitted by the United States supreme court and the ninth circuit  
39 court of appeals shall also be recognized for purposes of the Idaho income  
40 tax act.

1 SECTION 2. That Chapter 30, Title 63, Idaho Code, be, and the same is  
2 hereby amended by the addition thereto of a NEW SECTION, to be known and des-  
3 ignated as Section 63-3021B, Idaho Code, and to read as follows:

4 63-3021B. EXCESS BUSINESS LOSS LIMITATION CARRYFORWARD. There shall  
5 be allowed to a taxpayer a carryforward for the amounts disallowed by section  
6 461(1)(2) of the Internal Revenue Code for a period not to exceed twenty (20)  
7 years.

8 SECTION 3. That Section 63-3022, Idaho Code, be, and the same is hereby  
9 amended to read as follows:

10 63-3022. ADJUSTMENTS TO TAXABLE INCOME. The additions and subtrac-  
11 tions set forth in this section, and in sections 63-3022A through 63-3022U,  
12 Idaho Code, are to be applied to the extent allowed in computing Idaho tax-  
13 able income:

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

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

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

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

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

46 (4) Net operating losses incurred by a corporation during a year in  
47 which such corporation did not transact business in Idaho or was not  
48 included in a group of corporations combined under subsection (t) of

1 section 63-3027, Idaho Code, may not be subtracted. However, if at  
2 least one (1) corporation within a group of corporations combined under  
3 subsection (t) of section 63-3027, Idaho Code, was transacting business  
4 in Idaho during the taxable year in which the loss was incurred, then the  
5 net operating loss may be subtracted. Net operating losses incurred by  
6 a person, other than a corporation, in activities not taxable by Idaho  
7 may not be subtracted.

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

11 (d) In the case of a corporation, add the amount deducted under the pro-  
12 visions of sections 243(a) and (c), 244, 245 ~~and, 245A, 246A, 250 and 965~~ of  
13 the Internal Revenue Code (relating to dividends received by corporations  
14 and other special deductions) as limited by section 246(b) (1) of said code.

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

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

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

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

25 (2) Net operating losses attributable to a beneficiary of a trust or es-  
26 tate under section 642 of the Internal Revenue Code shall be a deduction  
27 for the beneficiary to the extent that income from the trust or estate  
28 would be attributable to this state under the provisions of this chap-  
29 ter.

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

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

1 a passive loss or a capital loss provided for in section 1212 of the Internal  
2 Revenue Code.

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

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

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

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

16 (l) Add back any amounts deducted under the provisions of section 199A  
17 of the Internal Revenue Code.

18 (m) Deduct any amounts included in gross income under the provisions of  
19 section 86 of the Internal Revenue Code relating to certain social security  
20 and railroad benefits.

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

24 (~~o~~) In the case of an individual for any tax period ending on or prior  
25 to December 31, 2016, deduct the amount contributed to a college savings pro-  
26 gram but not more than four thousand dollars (\$4,000) per tax year. In the  
27 case of an individual and for any tax period starting on or after January 1,  
28 2017, deduct the amount contributed to a college savings program, but not  
29 more than six thousand dollars (\$6,000) per tax year. For those married and  
30 filing jointly, deduct the amount contributed to a college savings program,  
31 but not more than twice of that allowed for an individual. To be qualified  
32 for this deduction, the contribution must be made during the taxable year and  
33 made to an Idaho college savings program account as described in chapter 54,  
34 title 33, Idaho Code.

35 (~~p~~) In the case of an individual, add the amount of a nonqualified  
36 withdrawal from an individual trust account or savings account established  
37 pursuant to chapter 54, title 33, Idaho Code, less any amount of such non-  
38 qualified withdrawal included in the individual's federal gross income  
39 pursuant to section 529 of the Internal Revenue Code.

40 (~~q~~) In the case of an individual, add the amount of a withdrawal from an  
41 individual trust account or savings account established pursuant to chapter  
42 54, title 33, Idaho Code, transferred to a qualified tuition program, as de-  
43 fined in section 529 of the Internal Revenue Code, that is operated by a state  
44 other than Idaho. The addition provided in this subsection is limited to the  
45 amount of the contributions to the Idaho individual trust account or savings  
46 account by the account owner that was deducted on the account owner's income  
47 tax return for the year of the transfer and the prior taxable year.

48 (r) For taxable year 2018 and each taxable year thereafter, in the case  
49 of an individual, there shall be allowed as a deduction from taxable income  
50 the amount of four thousand one hundred fifty dollars (\$4,150) for each de-

1 pendent of the taxpayer. For purposes of this section, the term "dependent"  
 2 means "dependent" as defined by section 152 of the Internal Revenue Code as  
 3 that code section existed on December 21, 2017. For taxable years beginning  
 4 January 1, 2019, and thereafter, the amount allowed to be deducted by this  
 5 subsection will be adjusted using the consumer price index method described  
 6 in section 63-3024, Idaho Code.

7 SECTION 4. That Section 63-3024, Idaho Code, be, and the same is hereby  
 8 amended to read as follows:

9 63-3024. INDIVIDUALS' TAX AND TAX ON ESTATES AND TRUSTS. For taxable  
 10 year 2001, and each taxable year thereafter, a tax measured by Idaho taxable  
 11 income as defined in this chapter is hereby imposed upon every individual,  
 12 trust, or estate required by this chapter to file a return.

13 (a) The tax imposed upon individuals, trusts and estates shall be com-  
 14 puted at the following rates:

15	When Idaho taxable income is:	The rate is:
16	Less than \$1,000	One and <del>six</del> <u>three</u> tenths percent (1. <u>63</u> %)
17	\$1,000 but less than \$2,000	\$1 <u>63</u> , plus three and <del>six</del> <u>three</u> 18 <u>tenths</u> percent (3. <u>63</u> %) of the amount over 19 \$1,000
20	\$2,000 but less than \$3,000	\$5 <u>246</u> , plus <del>four</del> <u>three</u> and <del>one</del> <u>eight</u> 21 <u>tenths</u> percent (4. <u>13.8</u> %) of the amount 22 over \$2,000
23	\$3,000 but less than \$4,000	\$9 <u>384</u> , plus <del>five</del> <u>four</u> and <del>one</del> <u>eight</u> 24 <u>tenths</u> percent (5. <u>14.8</u> %) of the amount 25 over \$3,000
26	\$4,000 but less than \$5,000	\$14 <u>432</u> , plus <del>six</del> <u>five</u> and <del>one</del> <u>eight</u> 27 <u>tenths</u> percent (6. <u>15.8</u> %) of the amount 28 over \$4,000
29	\$5,000 but less than \$7,500	\$20 <u>5190</u> , plus <del>seven</del> <u>six</u> and <del>one</del> <u>eight</u> 30 <u>tenths</u> percent (7. <u>16.8</u> %) of the 31 amount over \$5,000
32	\$7,500 and over	\$38 <u>360</u> , plus seven and <del>four</del> <u>one</u> 33 <u>tenth</u> percent (7. <u>41</u> %) of the amount over 34 \$7,500

35 For taxable year 2000 and each year thereafter, the state tax commission  
 36 shall prescribe a factor which shall be used to compute the Idaho income tax  
 37 brackets provided in this subsection (~~a~~) ~~of this section~~. The factor shall  
 38 provide an adjustment to the Idaho tax brackets so that inflation will not  
 39 result in a tax increase. The Idaho tax brackets shall be adjusted as fol-

1 lows: multiply the bracket amounts by the percentage (the consumer price in-  
 2 dex for the calendar year immediately preceding the calendar year to which  
 3 the adjusted brackets will apply, divided by the consumer price index for  
 4 calendar year 1998). For the purpose of this computation, the consumer price  
 5 index for any calendar year is the average of the consumer price index as of  
 6 the close of the twelve (12) month period for the immediately preceding cal-  
 7 endar year, without regard to any subsequent adjustments, as adopted by the  
 8 state tax commission. This adoption shall be exempt from the provisions of  
 9 chapter 52, title 67, Idaho Code. The consumer price index shall mean the  
 10 consumer price index for all U.S. urban consumers published by the United  
 11 States department of labor. The state tax commission shall annually include  
 12 the factor as provided in this subsection to multiply against Idaho taxable  
 13 income in the brackets above in this section to arrive at that year's Idaho  
 14 taxable income for tax bracket purposes.

15 (b) In case a joint return is filed by husband and wife pursuant to the  
 16 provisions of section 63-3031, Idaho Code, the tax imposed by this section  
 17 shall be twice the tax which would be imposed on one-half (1/2) of the aggre-  
 18 gate Idaho taxable income. For the purposes of this section, a return of a  
 19 surviving spouse, as defined in section 2(a) of the Internal Revenue Code,  
 20 and a head of household, as defined in section 2(b) of the Internal Revenue  
 21 Code, shall be treated as a joint return and the tax imposed shall be twice  
 22 the tax which would be imposed on one-half (1/2) of the Idaho taxable income.

23 (c) In the case of a trust that is an electing small business trust as  
 24 defined in section 1361 of the Internal Revenue Code, the special rules for  
 25 taxation of such trusts contained in section 641 of the Internal Revenue Code  
 26 shall apply, except that the maximum individual rate provided in this sec-  
 27 tion shall apply in computing tax due under this chapter.

28 (d) The state tax commission shall compute and publish Idaho income  
 29 tax liability for taxpayers at the midpoint of each bracket of Idaho taxable  
 30 income in fifty dollar (\$50.00) steps to fifty thousand dollars (\$50,000),  
 31 rounding such calculations to the nearest dollar. Taxpayers having income  
 32 within such brackets shall file returns based upon and pay taxes according  
 33 to the schedule thus established. The state tax commission shall promulgate  
 34 rules defining the conditions upon which such returns shall be filed.

35 SECTION 5. That Section 63-3025, Idaho Code, be, and the same is hereby  
 36 amended to read as follows:

37 63-3025. TAX ON CORPORATE INCOME. (1) For taxable years commencing on  
 38 and after January 1, 2001, a tax is hereby imposed on the Idaho taxable income  
 39 of a corporation, other than an S corporation, which transacts or is autho-  
 40 rized to transact business in this state or which has income attributable to  
 41 this state. The tax shall be equal to seven and ~~four-tenths~~ one tenth percent  
 42 (7.41%) of Idaho taxable income.

43 (2) In the case of an S corporation that is required to file a return un-  
 44 der section 63-3030, Idaho Code, a tax is hereby imposed at the rate provided  
 45 in subsection (1) of this section upon both:

46 (a) Net recognized built-in gain attributable to this state. The  
 47 amount of net recognized built-in gain attributable to this state shall  
 48 be computed in accordance with section 1374 of the Internal Revenue

1 Code subject to the apportionment and allocation provisions of section  
2 63-3027, Idaho Code.

3 (b) Excess net passive income attributable to this state. The amount of  
4 excess net passive income attributable to this state shall be computed  
5 in accordance with section 1375 of the Internal Revenue Code subject to  
6 the apportionment and allocation provisions of section 63-3027, Idaho  
7 Code.

8 (3) The tax imposed by subsection (1) or (2) of this section shall not  
9 be less than twenty dollars (\$20.00); provided further that the twenty dol-  
10 lar (\$20.00) minimum payment shall not be collected from nonproductive min-  
11 ing corporations.

12 (4) The tax imposed by this section shall not apply to corporations  
13 taxed pursuant to the provisions of section 63-3025A, Idaho Code.

14 SECTION 6. That Section 33-5401, Idaho Code, be, and the same is hereby  
15 amended to read as follows:

16 33-5401. DEFINITIONS. As used in this chapter, the following terms  
17 have the following meanings unless the context clearly denotes otherwise:

18 (1) "Account" means an individual trust account or savings account es-  
19 tablished as prescribed in this chapter.

20 (2) "Account owner" means the person or state or local government or-  
21 ganization designated in the agreement governing the account as having the  
22 right to withdraw moneys from the account before the account is disbursed to  
23 or for the benefit of the designated beneficiary.

24 (3) "Board" means the state college savings program board created in  
25 section 33-5402, Idaho Code.

26 (4) "Designated beneficiary," except as provided in section 33-5404,  
27 Idaho Code, means, with respect to an account, the individual designated at  
28 the time the account is opened as the individual whose higher education ex-  
29 penses are expected to be paid from the account or, if this designated bene-  
30 ficiary is replaced in accordance with section 33-5404, Idaho Code, the re-  
31 placement beneficiary.

32 (5) "Eligible educational institution" shall have the meaning provided  
33 in 26 U.S.C. section 529.

34 (6) "Financial institution" means any state bank, national bank, sav-  
35 ings bank, savings and loan association, credit union, insurance company,  
36 brokerage firm, trust company, mutual fund, investment firm or other similar  
37 entity that is authorized to do business in this state.

38 (7) "Member of the family" shall have the meaning as provided in 26  
39 U.S.C. section 529.

40 (8) "Nonqualified withdrawal" means an account withdrawal that is not  
41 one (1) of the following:

42 (a) A qualified withdrawal;

43 (b) A withdrawal made as the result of the death or disability of the  
44 designated beneficiary of an account;

45 (c) A withdrawal that is made on account of a scholarship as defined  
46 in 26 U.S.C. section 117 or an educational allowance as defined in 26  
47 U.S.C. section 25A(g) (2);

48 (d) A rollover or change of the designated beneficiary.

1           (9) "Person" means an individual, a trust, an estate, a partnership,  
2 an association, a foundation, a guardianship, a corporation, or a custodian  
3 under the Idaho uniform transfers to minors act.

4           (10) "Program" means ~~the~~ one (1) or more college savings programs estab-  
5 lished under this chapter.

6           (11) "Qualified higher education expenses" shall have the meaning pro-  
7 vided in 26 U.S.C. ~~section 529(e)(3)~~.

8           (12) "Qualified withdrawal" means a withdrawal from an account to pay  
9 the qualified higher education expenses of the designated beneficiary of the  
10 account, but only if the withdrawal is made in accordance with this chapter.

11           SECTION 7. An emergency existing therefor, which emergency is hereby  
12 declared to exist, this act shall be in full force and effect on and after its  
13 passage and approval, and retroactively to January 1, 2018.