



LEGISLATURE OF THE STATE OF IDAHO



Sixty-fifth Legislature

First Regular Session - 2019

IN THE _____

BILL NO. _____

BY _____

AN ACT

RELATING TO INCOME TAXES; AMENDING SECTION 63-3021, IDAHO CODE, TO REVISE A PROVISION REGARDING THE CALCULATION OF A NET OPERATING LOSS IN THE CASE OF A QUALIFIED BUSINESS INCOME DEDUCTION; AMENDING SECTION 63-3022, IDAHO CODE, TO ESTABLISH A PROVISION REGARDING THE CALCULATION OF IDAHO TAXABLE INCOME IN THE CASE OF A NET OPERATING LOSS CARRYFORWARD; AND DECLARING AN EMERGENCY AND PROVIDING RETROACTIVE APPLICATION.

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

SECTION 1. That Section 63-3021, Idaho Code, be, and the same is hereby amended to read as follows:

63-3021. NET OPERATING LOSS. (a) The term "net operating loss" means the amount by which Idaho taxable income, after making the modifications specified in subsection (b) of this section, is less than zero (0).

(b) Add the following amounts:

(1) The amount of any net operating loss deduction included in Idaho taxable income.

(2) In the case of a taxpayer other than a corporation:

(i) Any amount deducted due to losses in excess of gains from sales or exchanges of capital assets; and

(ii) Any deduction for long-term capital gains provided by this chapter.

(3) Any deduction allowed under section 151 of the Internal Revenue Code (relating to personal exemption) or any deduction in lieu of any such deduction.

(4) Any deduction for the standard or itemized deductions provided for in section 63 of the Internal Revenue Code, or section 63-3022(j), Idaho Code, except for any deduction allowable under section 165(c)(3) of the Internal Revenue Code (relating to casualty losses) pertaining to property physically located inside Idaho at the time of the casualty.

(5) ~~Any amount limited by section 461~~ deduction allowed under section 199A of the Internal Revenue Code (relating to the deduction for qualified business income).

(c) Subject to the provisions of sections 381 and 382, Internal Revenue Code, Idaho net operating losses incurred by a corporation will survive a merger.

(1) Changes in the location of a loss corporation's business or its key employees shall not be treated as a failure to satisfy the continuity of business requirements.

(2) If the premerger corporation conducted operations in Idaho and at least one (1) other state, the section 382, Internal Revenue Code, loss limitation is limited further by the premerger loss corporation's Idaho

1 apportionment factor for the last taxable year preceding the date of the
2 merger.

3 SECTION 2. That Section 63-3022, Idaho Code, be, and the same is hereby
4 amended to read as follows:

5 63-3022. ADJUSTMENTS TO TAXABLE INCOME. The additions and subtrac-
6 tions set forth in this section, and in sections 63-3022A through 63-3022U,
7 Idaho Code, are to be applied to the extent allowed in computing Idaho tax-
8 able income:

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

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

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

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

30 (3) Any portion of the net operating loss not subtracted from income in
31 the two (2) preceding years may be subtracted from income in the next
32 twenty (20) years succeeding the taxable year in which the loss arises
33 in order until exhausted. The sum of the deductions may not exceed the
34 amount of the net operating loss deduction incurred. The carryback
35 shall be limited to a total of fifty thousand dollars (\$50,000) in the
36 case of an individual filing as married filing separate in the year of
37 the loss.

38 (4) Net operating losses incurred by a corporation during a year in
39 which such corporation did not transact business in Idaho or was not
40 included in a group of corporations combined under subsection (t) of
41 section 63-3027, Idaho Code, may not be subtracted. However, if at
42 least one (1) corporation within a group of corporations combined under
43 subsection (t) of section 63-3027, Idaho Code, was transacting business
44 in Idaho during the taxable year in which the loss was incurred, then the
45 net operating loss may be subtracted. Net operating losses incurred by
46 a person, other than a corporation, in activities not taxable by Idaho
47 may not be subtracted.

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

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

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

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

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

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

18 (2) Net operating losses attributable to a beneficiary of a trust or es-
19 tate under section 642 of the Internal Revenue Code shall be a deduction
20 for the beneficiary to the extent that income from the trust or estate
21 would be attributable to this state under the provisions of this chap-
22 ter.

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

30 (i) In the case of a corporation, including any corporation included
31 in a group of corporations combined under subsection (t) of section 63-3027,
32 Idaho Code, add any capital loss or passive loss deducted which loss was in-
33 curred during any year in which such corporation did not transact business in
34 Idaho. However, do not add any capital loss deducted if a corporation, in-
35 cluding any corporation in a group of corporations combined under subsection
36 (t) of section 63-3027, Idaho Code, was transacting business in Idaho dur-
37 ing the taxable year in which the loss was incurred. In the case of persons
38 other than corporations, add any capital loss or passive loss deducted which
39 was incurred in activities not taxable by Idaho at the time such loss was in-
40 curred. In computing the income taxable to an S corporation or partnership
41 under this section, deduction shall not be allowed for a carryover or carry-
42 back of a net operating loss provided for in subsection (c) of this section,
43 a passive loss or a capital loss provided for in section 1212 of the Internal
44 Revenue Code.

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

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

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

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

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

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

15 (n) In the case of an individual for any tax period ending on or prior
16 to December 31, 2016, deduct the amount contributed to a college savings pro-
17 gram but not more than four thousand dollars (\$4,000) per tax year. In the
18 case of an individual and for any tax period starting on or after January 1,
19 2017, deduct the amount contributed to a college savings program, but not
20 more than six thousand dollars (\$6,000) per tax year. For those married and
21 filing jointly, deduct the amount contributed to a college savings program,
22 but not more than twice of that allowed for an individual. To be qualified
23 for this deduction, the contribution must be made during the taxable year and
24 made to an Idaho college savings program account as described in chapter 54,
25 title 33, Idaho Code.

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

34 (p) In the case of an individual, add the amount of a withdrawal from
35 an individual trust account or savings account established pursuant to chap-
36 ter 54, title 33, Idaho Code, transferred to a qualified tuition program, as
37 defined in section 529 of the Internal Revenue Code, that is operated by a
38 state other than Idaho or to a qualified ABLE program as defined in section
39 529A of the Internal Revenue Code. The addition provided in this subsection
40 is limited to the amount of the contributions to the Idaho individual trust
41 account or savings account by the account owner that was deducted on the ac-
42 count owner's Idaho income tax return for the year of the transfer and the
43 prior taxable year.

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

48 SECTION 3. An emergency existing therefor, which emergency is hereby
49 declared to exist, this act shall be in full force and effect on and after its
50 passage and approval, and retroactively to January 1, 2019.