



Eric Milstead  
Director

# Legislative Services Office

## Idaho State Legislature

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### MEMORANDUM

**TO:** Senators JOHNSON, Bayer, Burgoyne and,  
Representatives COLLINS, Kauffman, Erpelding

**FROM:** Kristin Ford - Division Manager

**DATE:** November 08, 2018

**SUBJECT:** Temporary Rule

IDAPA 35.01.01 - Income Tax Administrative Rules - Adoption of Temporary Rule - Docket No.  
35-0101-1805

We are forwarding this temporary rule to you for your information only. No analysis was done by LSO. This rule is posted on our web site. If you have any questions, please call Kristin Ford at the Legislative Services Office at (208) 334-4834. Thank you.

Attachment: Temporary Rule

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Kristin Ford, Manager  
Research & Legislation

Paul Headlee, Manager  
Budget & Policy Analysis

April Renfro, Manager  
Legislative Audits

Glenn Harris, Manager  
Information Technology

Statehouse, P.O. Box 83720  
Boise, Idaho 83720-0054

Tel: 208-334-2475  
[www.legislature.idaho.gov](http://www.legislature.idaho.gov)

**IDAPA 35 – IDAHO STATE TAX COMMISSION**

**35.01.01 – INCOME TAX ADMINISTRATIVE RULES**

**DOCKET NO. 35-0101-1805**

**NOTICE OF RULEMAKING – ADOPTION OF TEMPORARY RULE**

**EFFECTIVE DATE:** The effective date of the temporary rule is January 1, 2018.

**AUTHORITY:** In compliance with Section 67-5226, Idaho Code, notice is hereby given this agency has adopted a temporary rule. The action is authorized pursuant to Sections 63-105 and 63-3039, Idaho Code.

**DESCRIPTIVE SUMMARY:** The following is the required finding and concise statement of its supporting reasons for adopting a temporary rule:

Rule 291T — TAX PAID BY PASS-THROUGH ENTITIES FOR OWNERS OR BENEFICIARIES -- COMPUTATION OF IDAHO TAXABLE INCOME FOR TAXABLE YEARS BEGINNING ON OR AFTER JANUARY 1, 2014:

This change is to give guidance on how to report the deemed repatriation income on the Idaho tax return.

**TEMPORARY RULE JUSTIFICATION:** Pursuant to Section 67-5226(1)(a), Idaho Code, the Governor has found that temporary adoption of the rule is appropriate for the following reasons:

Compliance with deadlines in amendments to governing law or federal programs.

**FEE SUMMARY:** Pursuant to Section 67-5226(2), Idaho Code, the Governor has found that the fee or charge being imposed or increased is justified and necessary to avoid immediate danger and the fee is described herein: N/A

**ASSISTANCE ON TECHNICAL QUESTIONS:** For assistance on technical questions concerning the temporary rule, contact Cynthia Adrian (208) 334-7670.

Dated this 18th day of September, 2018.

Cynthia Adrian, Tax Policy Specialist  
Idaho State Tax Commission  
800 Park Blvd., Plaza IV  
P.O. Box 36  
Boise, ID 83722-0410  
(208) 334-7670  
[Cynthia.Adrian@tax.idaho.gov](mailto:Cynthia.Adrian@tax.idaho.gov)

**THE FOLLOWING IS THE TEXT OF THE TEMPORARY RULE FOR DOCKET NO. 35-0101-1805  
(Only Those Sections With Amendments Are Shown.)**

**291. TAX PAID BY PASS-THROUGH ENTITIES FOR OWNERS OR BENEFICIARIES -- COMPUTATION OF IDAHO TAXABLE INCOME FOR TAXABLE YEARS BEGINNING ON OR AFTER JANUARY 1, 2014 (RULE 291).**  
Sections 63-3022L and 63-3026A, Idaho Code

**01. In General.** A pass-through entity is responsible for reporting and paying the tax for nonresident individuals or withholding tax on the individual's share of income from the pass-through entity required to be included in Idaho taxable income as prescribed in Section 63-3036B, Idaho Code. For purposes of this rule, pass-through entity means "pass-through entity" as defined in Section 63-3006C, Idaho Code. (4-4-13)

**02. Income Reportable to Idaho.** The following items must be included in the computation of Idaho taxable income for an individual: (4-4-13)

**a.** Pass-through items that are income from Idaho sources of an owner as determined pursuant to Rule 263 of these rules. (4-7-11)

**b.** Distributable net income from an estate or trust that is income from Idaho sources as determined pursuant to Rule 261 of these rules. (4-7-11)

**03. Deductions.** Pass-through entities paying the tax under Section 63-3022L, Idaho Code, are not entitled to claim the following deductions on behalf of an individual. (4-7-11)

**a.** Capital Loss. As provided in Section 63-3022(i), Idaho Code, S corporations and partnerships are not allowed to carry over or carry back any capital loss provided for in Section 1212, Internal Revenue Code. (3-30-07)

**b.** Net Operating Loss. As provided in Section 63-3022(i), Idaho Code, S corporations and partnerships are not allowed to carry over or carry back any net operating loss provided for in Section 63-3022(c), Idaho Code. (3-30-07)

**c.** Idaho Capital Gains Deduction. As provided in Section 63-3022H, Idaho Code, the Idaho capital gains deduction may only be claimed by individual taxpayers on an individual income tax return. (4-7-11)

**d.** Informational Items. Amounts provided to owners of pass-through entities and beneficiaries of trusts and estates on the federal Schedule K-1 that are informational only may not be used as a deduction in computing the taxable income reportable under Section 63-3022L, Idaho Code. Informational items include the domestic production activities information and net earnings from self-employment. (4-7-11)

**e.** Items Not Deductible Under the Internal Revenue Code. A deduction is not allowed for items disallowed under the Internal Revenue Code. For example, a deduction is not allowed for items disallowed as a deduction in Sections 162(c) and 262 through 280E, Internal Revenue Code, unless specifically allowed by Idaho law. Items allowed by Idaho law include expenses related to tax-exempt income under Section 265, Internal Revenue Code, which are allowed to be deducted as a result of Section 63-3022M, Idaho Code. (4-7-11)

**f.** Items Not Reported as a Pass-Through Deduction. Amounts not reported from the pass-through entity to the pass-through owner are not allowed as a deduction under Section 63-3022L, Idaho Code. These include: (4-7-11)

i. The standard deduction; (4-7-11)

ii. Personal exemptions; (4-7-11)

iii. Itemized deductions that result from activity of the pass-through owner. For example, a deduction is not allowed for charitable contributions made personally by the pass-through owner, but is allowed for the pass-through owner's share of charitable contributions made by the pass-through entity. (4-7-11)

**g.** Items Reported as a Pass-Through Deduction. Amounts reported from the pass-through entity to the pass-through owner in their distributive share are allowed as a deduction under Section 63-3022L, Idaho Code, unless otherwise disallowed under this rule. These include but are not limited to: (3-25-16)

i. Section 179, Internal Revenue Code, deduction; (3-25-16)

- ii. Charitable contributions made by the pass-through entity; (3-25-16)
- iii. Investment interest expense; (3-25-16)
- iv. Section 59(e)(2), Internal Revenue Code, expenditures (qualified research expenditures); (3-25-16)
- v. Amounts paid for medical insurance; (3-25-16)
- vi. Educational assistance benefits; (3-25-16)
- vii. Payments to a pension or IRA; (3-25-16)
- viii. Sections 965(b) or 965(c), Internal Revenue Code, dividend deductions or adjustments. (1-1-18)T

**04. Double Deductions Disallowed.** A pass-through owner may not deduct amounts that previously have been deducted by a pass-through entity paying the tax on his behalf. If the pass-through owner files an Idaho individual income tax return reporting federal taxable income that includes amounts previously deducted by a pass-through entity on his behalf, the pass-through owner must add back the duplicated deduction amounts in computing his Idaho taxable income on his individual income tax return. (4-7-11)