

IN THE HOUSE OF REPRESENTATIVES

HOUSE BILL NO. 355

BY REVENUE AND TAXATION COMMITTEE

AN ACT

1 RELATING TO THE INTERNAL REVENUE CODE CONFORMITY BILL; AMENDING SECTION  
2 63-3004, IDAHO CODE, TO REVISE THE DEFINITION OF "INTERNAL REVENUE  
3 CODE"; AMENDING SECTION 63-3022, IDAHO CODE, TO REVISE PROVISIONS RE-  
4 GARDING ADJUSTMENTS TO TAXABLE INCOME FOR CORPORATIONS; AND DECLARING  
5 AN EMERGENCY AND PROVIDING RETROACTIVE APPLICATION.  
6

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

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

10 63-3004. INTERNAL REVENUE CODE. (a) The term "Internal Revenue Code"  
11 means, for taxable years beginning on or after the first day of January 2017,  
12 the Internal Revenue Code of 1986 of the United States, as amended, and in ef-  
13 fect on the ~~first~~ twenty-first day of ~~January~~ December 2017, except that In-  
14 ternal Revenue Code sections 965 and 213 are applied as in effect on December  
15 31, 2017.

16 ~~(b) Provisions of the Internal Revenue Code amended, deleted, or added~~  
17 ~~prior to the effective date of the latest amendment to this section shall~~  
18 ~~be applicable for Idaho income tax purposes on the effective date provided~~  
19 ~~for such amendments, deletions, or additions, including retroactive provi-~~  
20 ~~sions.~~

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

25 ~~(d)~~ Notwithstanding subsection ~~(e)~~ of this section, marriages recog-  
26 nized and permitted by the United States supreme court and the ninth circuit  
27 court of appeals shall also be recognized for purposes of the Idaho income  
28 tax act.

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

31 63-3022. ADJUSTMENTS TO TAXABLE INCOME. The additions and subtrac-  
32 tions set forth in this section, and in sections 63-3022A through 63-3022U,  
33 Idaho Code, are to be applied to the extent allowed in computing Idaho tax-  
34 able income:

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

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

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

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

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

28 (4) Net operating losses incurred by a corporation during a year in  
29 which such corporation did not transact business in Idaho or was not  
30 included in a group of corporations combined under subsection (t) of  
31 section 63-3027, Idaho Code, may not be subtracted. However, if at  
32 least one (1) corporation within a group of corporations combined under  
33 subsection (t) of section 63-3027, Idaho Code, was transacting business  
34 in Idaho during the taxable year in which the loss was incurred, then the  
35 net operating loss may be subtracted. Net operating losses incurred by  
36 a person, other than a corporation, in activities not taxable by Idaho  
37 may not be subtracted.

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

41 (d) In the case of a corporation, add the amount deducted under the pro-  
42 visions of sections 243(a) and (c), 244, 245 ~~and~~, 246A, and 965 of the Inter-  
43 nal Revenue Code (relating to dividends received by corporations and other  
44 special deductions) as limited by section 246(b) (1) of said code.

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

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

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

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

5 (2) Net operating losses attributable to a beneficiary of a trust or es-  
6 tate under section 642 of the Internal Revenue Code shall be a deduction  
7 for the beneficiary to the extent that income from the trust or estate  
8 would be attributable to this state under the provisions of this chap-  
9 ter.

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

17 (i) In the case of a corporation, including any corporation included  
18 in a group of corporations combined under subsection (t) of section 63-3027,  
19 Idaho Code, add any capital loss or passive loss deducted which loss was in-  
20 curred during any year in which such corporation did not transact business in  
21 Idaho. However, do not add any capital loss deducted if a corporation, in-  
22 cluding any corporation in a group of corporations combined under subsection  
23 (t) of section 63-3027, Idaho Code, was transacting business in Idaho dur-  
24 ing the taxable year in which the loss was incurred. In the case of persons  
25 other than corporations, add any capital loss or passive loss deducted which  
26 was incurred in activities not taxable by Idaho at the time such loss was in-  
27 curred. In computing the income taxable to an S corporation or partnership  
28 under this section, deduction shall not be allowed for a carryover or carry-  
29 back of a net operating loss provided for in subsection (c) of this section,  
30 a passive loss or a capital loss provided for in section 1212 of the Internal  
31 Revenue Code.

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

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

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

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

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

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

1 (n) In the case of an individual for any tax period ending on or prior  
2 to December 31, 2016, deduct the amount contributed to a college savings pro-  
3 gram but not more than four thousand dollars (\$4,000) per tax year. In the  
4 case of an individual and for any tax period starting on or after January 1,  
5 2017, deduct the amount contributed to a college savings program, but not  
6 more than six thousand dollars (\$6,000) per tax year. For those married and  
7 filing jointly, deduct the amount contributed to a college savings program,  
8 but not more than twice of that allowed for an individual. To be qualified  
9 for this deduction, the contribution must be made during the taxable year and  
10 made to an Idaho college savings program account as described in chapter 54,  
11 title 33, Idaho Code.

12 (o) In the case of an individual, add the amount of a nonqualified with-  
13 drawal from an individual trust account or savings account established pur-  
14 suant to chapter 54, title 33, Idaho Code, less any amount of such nonqual-  
15 ified withdrawal included in the individual's federal gross income pursuant  
16 to section 529 of the Internal Revenue Code.

17 (p) In the case of an individual, add the amount of a withdrawal from an  
18 individual trust account or savings account established pursuant to chapter  
19 54, title 33, Idaho Code, transferred to a qualified tuition program, as de-  
20 fined in section 529 of the Internal Revenue Code, that is operated by a state  
21 other than Idaho. The addition provided in this subsection is limited to the  
22 amount of the contributions to the Idaho individual trust account or savings  
23 account by the account owner that was deducted on the account owner's income  
24 tax return for the year of the transfer and the prior taxable year.

25 SECTION 3. An emergency existing therefor, which emergency is hereby  
26 declared to exist, this act shall be in full force and effect on and after its  
27 passage and approval, and retroactively to January 1, 2018.