

IN THE HOUSE OF REPRESENTATIVES

HOUSE BILL NO. 3

BY REVENUE AND TAXATION COMMITTEE

AN ACT

RELATING TO CORPORATION INCOME TAXES; AMENDING SECTION 63-3027B, IDAHO CODE, TO REVISE STANDARDS FOR MAKING THE WATER'S-EDGE ELECTION ON BEHALF OF MEMBERS OF THE WATER'S-EDGE COMBINED GROUP; DECLARING AN EMERGENCY AND PROVIDING RETROACTIVE APPLICATION.

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

SECTION 1. That Section 63-3027B, Idaho Code, be, and the same is hereby amended to read as follows:

63-3027B. WATER'S-EDGE ELECTION. (a) ~~Notwithstanding the provisions of subsections (s) and (t) of section 63-3027, Idaho Code, a~~ qualified taxpayer, as defined in paragraph (3) of subsection (b) of this section whose income is subject to the tax imposed under this chapter, may elect to determine its income derived from or attributable to sources within this state pursuant to a water's-edge election in accordance with the provisions of this chapter, as modified by sections 63-3027B through 63-3027E, Idaho Code. A taxpayer who makes a water's-edge election shall take into account the income and apportionment factors of ~~only~~ all affiliated corporations in a unitary relationship with the taxpayer, other than corporations filing elections under section 936 of the Internal Revenue Code, and which either file a federal income tax return under the Internal Revenue Code or are included in a federal consolidated return.

(b) For purposes of this section:

(1) The phrase "over fifty percent (50%) of the voting stock directly or indirectly owned or controlled" shall be substituted for the phrase "at least eighty percent (80%)" each place it appears in section 1504 of the Internal Revenue Code.

(2) Any combined return shall include only corporations the voting stock of which is more than fifty percent (50%) owned directly or indirectly by a common owner or owners.

(3) A "qualified taxpayer" is a corporation which files, with the state income tax return on which the water's-edge election is made, a consent to the reasonable production of documents within the taxing jurisdiction. The consent shall remain in effect so long as the water's-edge election is in effect.

(4) "Water's-edge combined group" shall mean all corporations or entities properly includable in the election of a taxpayer in subsection (a) of this section.

(5) The only income of a foreign sales corporation to be taken into account shall be the income subject to federal taxation, taking into account the provisions of section 921 of the Internal Revenue Code.

(6) For each corporation within the combined group subject to tax by this chapter, a water's-edge election will be deemed to have been filed and consent given under

1 paragraph (3) of this subsection upon the filing of a valid water's-edge election by any
2 qualified taxpayer of the combined group. If during the period a water's-edge election is
3 in effect, another corporation subject to tax by this state becomes a part of the combined
4 group, the corporation is deemed to have made a water's-edge election and given consent
5 under paragraph (3) of this subsection.

6 (c) A water's-edge election may be disregarded, and the income of the taxpayer
7 determined without regard to the provisions of this section pursuant to those conditions which
8 may be required by the state tax commission under subsection (b) of section 63-3027C, Idaho
9 Code, if any corporation fails to comply with:

- 10 (1) The domestic disclosure spreadsheet filing requirements defined in section 63-3027E,
11 Idaho Code; or
12 (2) This state's legal and procedural requirements.

13 SECTION 2. An emergency existing therefor, which emergency is hereby declared to
14 exist, this act shall be in full force and effect on and after its passage and approval, and
15 retroactively to January 1, 2009.