

IN THE HOUSE OF REPRESENTATIVES

HOUSE BILL NO. 381

BY REVENUE AND TAXATION COMMITTEE

AN ACT

RELATING TO INCOME TAXES; AMENDING SECTION 63-3021, IDAHO CODE, TO CLARIFY THE DEFINITION OF "NET OPERATING LOSS," TO PROVIDE THAT NET OPERATING LOSSES OF A CORPORATION WILL SURVIVE A MERGER SUBJECT TO CERTAIN CONDITIONS AND TO MAKE A TECHNICAL CORRECTION; 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.

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

1           SECTION 2. An emergency existing therefor, which emergency is hereby  
2 declared to exist, this act shall be in full force and effect on and after its  
3 passage and approval, and retroactively to January 1, 2010.