

IN THE HOUSE OF REPRESENTATIVES

HOUSE BILL NO. 386, As Amended

BY REVENUE AND TAXATION COMMITTEE

AN ACT

1 RELATING TO INCOME TAXES; AMENDING SECTION 63-3022, IDAHO CODE, TO REVISE  
2 HOW WITHDRAWALS FROM THE STATE COLLEGE SAVINGS ACCOUNT ARE ADDED TO  
3 TAXABLE INCOME; AMENDING SECTION 63-3029G, IDAHO CODE, TO REVISE THE  
4 INCOME TAX CREDIT FOR RESEARCH ACTIVITY; AMENDING SECTION 63-4403,  
5 IDAHO CODE, TO PROVIDE THAT THE ADDITIONAL INCOME TAX CREDIT FOR CAPITAL  
6 INVESTMENT SHALL BE CALCULATED ON THE AMOUNT OF QUALIFIED INVESTMENT  
7 MADE DURING THE PROJECT PERIOD WHEREVER LOCATED WITHIN THIS STATE; AND  
8 DECLARING AN EMERGENCY AND PROVIDING RETROACTIVE APPLICATION.  
9

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

11 SECTION 1. That Section 63-3022, Idaho Code, be, and the same is hereby  
12 amended to read as follows:

13 63-3022. ADJUSTMENTS TO TAXABLE INCOME. The additions and  
14 subtractions set forth in this section, and in sections 63-3022A through  
15 63-3022Q, Idaho Code, are to be applied to the extent allowed in computing  
16 Idaho taxable income:

17 (a) Add any state and local taxes, as defined in section 164 of the  
18 Internal Revenue Code and, measured by net income, paid or accrued during  
19 the taxable year adjusted for state or local tax refunds used in arriving at  
20 taxable income.

21 (b) Add the net operating loss deduction used in arriving at taxable  
22 income.

23 (c) (1) A net operating loss for any taxable year commencing on and  
24 after January 1, 2000, shall be a net operating loss carryback not to  
25 exceed a total of one hundred thousand dollars (\$100,000) to the two (2)  
26 immediately preceding taxable years. Any portion of the net operating  
27 loss not subtracted in the two (2) preceding years may be subtracted  
28 in the next twenty (20) years succeeding the taxable year in which the  
29 loss arises in order until exhausted. The sum of the deductions may not  
30 exceed the amount of the net operating loss deduction incurred. At the  
31 election of the taxpayer, the two (2) year carryback may be foregone and  
32 the loss subtracted from income received in taxable years arising in  
33 the next twenty (20) years succeeding the taxable year in which the loss  
34 arises in order until exhausted. The election shall be made as under  
35 section 172(b)(3) of the Internal Revenue Code. An election under this  
36 subsection must be in the manner prescribed in the rules of the state tax  
37 commission and once made is irrevocable for the year in which it is made.  
38 The term "income" as used in this subsection (c) means Idaho taxable  
39 income as defined in this chapter as modified by section 63-3021(b)(2),  
40 (3) and (4), Idaho Code.

41 (2) Net operating losses incurred by a corporation during a year in  
42 which such corporation did not transact business in Idaho or was not

1 included in a group of corporations combined under subsection (t) of  
2 section 63-3027, Idaho Code, may not be subtracted. However, if at  
3 least one (1) corporation within a group of corporations combined under  
4 subsection (t) of section 63-3027, Idaho Code, was transacting business  
5 in Idaho during the taxable year in which the loss was incurred, then the  
6 net operating loss may be subtracted. Net operating losses incurred by  
7 a person, other than a corporation, in activities not taxable by Idaho  
8 may not be subtracted.

9 (d) In the case of a corporation, add the amount deducted under the  
10 provisions of sections 243(a) and (c), 244, 245 and 246A of the Internal  
11 Revenue Code (relating to dividends received by corporations) as limited by  
12 section 246(b) (1) of said code.

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

15 (f) Subtract the amount of any income received or accrued during  
16 the taxable year which is exempt from taxation by this state, under the  
17 provisions of any other law of this state or a law of the United States, if not  
18 previously subtracted in arriving at taxable income.

19 (g) For the purpose of determining the Idaho taxable income of the  
20 beneficiary of a trust or of an estate:

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

23 (2) Net operating losses attributable to a beneficiary of a trust  
24 or estate under section 642 of the Internal Revenue Code shall be a  
25 deduction for the beneficiary to the extent that income from the trust  
26 or estate would be attributable to this state under the provisions of  
27 this chapter.

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

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

49 (j) In the case of an individual, there shall be allowed as a deduction  
50 from gross income either (1) or (2) at the option of the taxpayer:

1 (1) The standard deduction as defined in section 63, Internal Revenue  
2 Code.

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

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

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

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

17 (n) In the case of an individual, deduct the amount contributed to a  
18 college savings program pursuant to chapter 54, title 33, Idaho Code, but not  
19 more than four thousand dollars (\$4,000) per tax year. If the contribution  
20 is made on or before April 15, 2001, it may be deducted for tax year 2000  
21 and an individual can make another contribution and claim the deduction  
22 according to the limits provided in this subsection during 2001 for tax year  
23 2001, as long as the contribution is made on or before December 31, 2001.

24 (o) In the case of an individual, add the amount of a nonqualified  
25 withdrawal from an individual trust account or savings account established  
26 pursuant to chapter 54, title 33, Idaho Code, less any amount of such  
27 nonqualified withdrawal included in the individual's federal gross income  
28 pursuant to section 529 of the Internal Revenue Code.

29 (p) In the case of an individual, add the amount of a withdrawal from an  
30 individual trust account or savings account established pursuant to chapter  
31 54, title 33, Idaho Code, transferred to a qualified tuition program, as  
32 defined in section 529 of the Internal Revenue Code, that is operated by a  
33 state other than Idaho. The addition provided in this subsection is limited  
34 to the amount of the ~~total~~ contributions to the Idaho individual trust  
35 account or savings account by the account owner ~~in the twelve (12) months~~  
36 ~~preceding the date of the transfer that were deducted on the account owner's~~  
37 income tax return for the year of the transfer and the prior taxable year.

38 SECTION 2. That Section 63-3029G, Idaho Code, be, and the same is hereby  
39 amended to read as follows:

40 63-3029G. CREDITS FOR RESEARCH ACTIVITIES CONDUCTED IN THIS STATE --  
41 CARRY FORWARD.

42 (1) (a) Subject to the limitations of this section, ~~for taxable~~  
43 ~~years after January 1, 2001,~~ there shall be allowed to a taxpayer  
44 a nonrefundable credit against taxes imposed by sections 63-3024,  
45 63-3025 and 63-3025A, Idaho Code, for increasing research activities in  
46 Idaho ~~beginning, at the election of the taxpayer, either:~~

47 ~~(i) January 1, 2001, or~~

48 ~~(ii) The first day of the taxpayer's taxable year beginning in~~  
49 ~~2001.~~

1 (b) The credit allowed by subsection (1) (a) of this section shall be the  
2 sum of:

- 3 (i) Five percent (5%) of the excess of qualified research  
4 expenses for research conducted in Idaho over the base amount; and  
5 (ii) Five percent (5%) basic research payments allowable under  
6 subsection (e) of section 41 of the Internal Revenue Code for basic  
7 research conducted in Idaho.

8 ~~(c) Subject to the limitation in subsection (3) of this section, a~~  
9 ~~taxpayer making the election permitted by subsection (1) (a) (i) of~~  
10 ~~this section, credit for research activities occurring prior to the~~  
11 ~~beginning of the taxpayer's taxable year beginning in 2001 shall be~~  
12 ~~claimed on the taxpayer's return for its taxable year 2001 in addition~~  
13 ~~to credit relating to activity in that year~~ The credit allowed by  
14 subsection (1) (a) of this section shall be computed without regard to  
15 the calculation of the alternative incremental credit provided for  
16 in section 41(c) (4) of the Internal Revenue Code or the alternative  
17 simplified credit provided for in section 41(c) (5) of the Internal  
18 Revenue Code.

19 (2) As used in this section:

20 (a) The terms "qualified research expenses," "qualified research,"  
21 "basic research payments" and "basic research" shall be as defined in  
22 section 41 of the Internal Revenue Code except that the research must be  
23 conducted in Idaho.

24 (b) The term "base amount" shall mean an amount calculated as provided  
25 in sections 41(c) and 41(h) of the Internal Revenue Code, except that:

26 (i) ~~The base amount does not include the calculation of the~~  
27 ~~alternative incremental credit provided for in section 41(c) (4)~~  
28 ~~of the Internal Revenue Code;~~

29 ~~(ii)~~ A taxpayer's gross receipts include only those gross  
30 receipts attributable to sources within this state as provided in  
31 subsections (q) and (r) of section 63-3027, Idaho Code; and

32 ~~(iii)~~ Notwithstanding section 41(c) of the Internal Revenue Code,  
33 for purposes of calculating the base amount, a taxpayer:

34 (A) May elect to be treated as a start-up company as provided  
35 in section 41(c) (3) (B) of the Internal Revenue Code,  
36 regardless of whether the taxpayer meets the requirements of  
37 section 41(c) (3) (B) (i) (I) or (II) of the Internal Revenue  
38 Code; and

39 (B) May not revoke an election to be treated as a start-up  
40 company.

41 (3) The credit allowed by subsection (1) (a) of this section together  
42 with any credits carried forward under subsection (5) of this section  
43 shall not exceed the amount of tax due under sections 63-3024, 63-3025 and  
44 63-3025A, Idaho Code, after allowance for all other credits permitted by  
45 this chapter. When credits earned in more than one (1) taxable year are  
46 available, the oldest credits shall be applied first.

47 (4) In the case of a group of corporations filing a combined report  
48 under subsection (t) of section 63-3027, Idaho Code, credit earned by one (1)  
49 member of the group but not used by that member may be used by another member  
50 of the group. For a combined group of corporations, any member of the group

1 may claim credit carried forward unless the member who earned the credit is  
2 no longer included in the combined group.

3 (5) The credit allowed by subsection (1) (a) of this section shall be  
4 claimed for the taxable year during which the taxpayer qualifies for the  
5 credit. If the credit exceeds the limitation under subsection (3) of this  
6 section, the excess amount may be carried forward for a period that does not  
7 exceed the next fourteen (14) taxable years.

8 (6) In addition to other needed rules, the state tax commission may  
9 promulgate rules prescribing, in the case of S corporations, partnerships,  
10 trusts or estates, a method of attributing the credit under this section to  
11 the shareholders, partners or beneficiaries in proportion to their share of  
12 the income from the S corporation, partnership, trust or estate.

13 SECTION 3. That Section 63-4403, Idaho Code, be, and the same is hereby  
14 amended to read as follows:

15 63-4403. ADDITIONAL INCOME TAX CREDIT FOR CAPITAL INVESTMENT. (1) For  
16 taxable years beginning on or after January 1, 2006, and before December  
17 31, 2020, and subject to the limitations of this chapter, a taxpayer who has  
18 certified that the tax incentive criteria will be met within a project site  
19 during a project period shall, in regard to qualified investments made after  
20 the beginning of the project period and before December 31, 2020, in lieu  
21 of the investment tax credit provided in section 63-3029B, Idaho Code, be  
22 allowed a nonrefundable credit against taxes imposed by sections 63-3024,  
23 63-3025 and 63-3025A, Idaho Code, in the amount of three and seventy-five one  
24 hundredths percent (3.75%) of the amount of qualified investment made during  
25 ~~a taxable year~~ the project period, wherever located within this state.

26 (2) The credit allowed by this section shall not exceed sixty-two and  
27 five-tenths percent (62.5%) of the tax liability of the taxpayer.

28 (3) The credit allowed by this section shall not exceed seven hundred  
29 fifty thousand dollars (\$750,000) in any one (1) taxable year.

30 SECTION 4. An emergency existing therefor, which emergency is hereby  
31 declared to exist, Section 1 of this act shall be in full force and effect on  
32 and after passage approval and retroactively to January 1, 2008. Sections 2  
33 and 3 of this act shall be in full force and effect on and after passage and  
34 approval, and retroactively to January 1, 2010.