

IN THE HOUSE OF REPRESENTATIVES

HOUSE BILL NO. 8

BY REVENUE AND TAXATION COMMITTEE

AN ACT

1 RELATING TO INCOME TAXATION; AMENDING SECTION 63-3022L, IDAHO CODE, TO
2 DISALLOW THE ELECTION FOR PAYMENT OF TAX BY PASS-THROUGH ENTITIES TO
3 NONRESIDENTS WHO HAVE ADDITIONAL IDAHO TAXABLE INCOME AND PROVIDING
4 FOR RULEMAKING AUTHORITY; AMENDING SECTION 63-3026A, IDAHO CODE, TO
5 CLARIFY THE COMPUTATION OF REPORTABLE INCOME FROM THE SALE OF A PUB-
6 LICLY TRADED PARTNERSHIP; AMENDING SECTION 63-3036B, IDAHO CODE, TO
7 MODIFY THE SYSTEM OF BACKUP WITHHOLDING FOR INDIVIDUALS WHO ARE OWNERS
8 OF PASS-THROUGH ENTITIES, TO PROVIDE APPLICATION TO PUBLICLY TRADED
9 PARTNERSHIPS THAT PROVIDE TAX INFORMATION REGARDING CERTAIN PARTNERS
10 AND TO MAKE TECHNICAL CORRECTIONS; DECLARING AN EMERGENCY AND PROVIDING
11 RETROACTIVE APPLICATION.
12

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

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

16 63-3022L. INDIVIDUALS WHO ARE OFFICERS, DIRECTORS OR OWNERS OF AN IN-
17 TEREST IN A PASS-THROUGH ENTITY OR BENEFICIARIES OF A TRUST OR ESTATE. (1)
18 Individuals who are officers, directors or owners of an interest in a
19 pass-through entity, as defined in section 63-3006C, Idaho Code, trans-
20 acting business in Idaho or who are beneficiaries of a trust or estate
21 with income taxable in Idaho may elect to have Idaho tax relating to in-
22 come described in subsection (2) of this section reported and paid by the
23 pass-through entity. Income subject to the election in this subsection
24 shall be taxed at the rate applicable to corporations. The election in this
25 section is not available to an individual who is an Idaho resident or to a
26 nonresident who has Idaho taxable income in addition to income subject to the
27 election allowed in this section.

28 (2) The election in subsection (1) of this section applies to:

29 (a) Wages, salary and other compensation paid by the pass-through
30 entity to such officers, directors, owners of an interest in a
31 pass-through entity or beneficiaries to the extent the compensation is
32 Idaho taxable income of the individual to whom it is paid; and

33 (b) The share of any income, loss, deduction or credit of a pass-through
34 entity required to be included on such individual's Idaho return.

35 (3) The election in subsection (1) shall be made at the time and in the
36 manner prescribed in the rules of the state tax commission and once made is
37 irrevocable for the taxable year. A new election may be made each year. The
38 state tax commission may, by rule, provide for continuing elections or for
39 the renewal of elections or both.

40 (4) If no election is made under subsection (1) of this section, the
41 pass-through entity shall withhold taxes as required in section 63-3036B,
42 Idaho Code.

1 (5) For purposes of subsection (2) of this section, deductions, loss
2 and credits allowed in computing the tax liability attributable to an elect-
3 ing individual shall be prescribed in the rules of the state tax commission.

4 SECTION 2. That Section 63-3026A, Idaho Code, be, and the same is hereby
5 amended to read as follows:

6 63-3026A. COMPUTING IDAHO TAXABLE INCOME OF PART-YEAR OR NONRESIDENT
7 INDIVIDUALS, TRUSTS AND ESTATES. (1) For nonresident individuals, trusts,
8 or estates the term "Idaho taxable income" includes only those components of
9 Idaho taxable income as computed for a resident which are derived from or re-
10 lated to sources within Idaho. This is to be computed without the deductions
11 for either the standard deduction or itemized deductions or personal exemp-
12 tions except as provided in subsection (4) of this section.

13 (2) For part-year resident individuals, trusts or estates the term
14 "Idaho taxable income" includes the total of: (a) Idaho taxable income as
15 computed for a resident for the portion of the tax period during which a
16 taxpayer is domiciled in or is residing in Idaho, plus (b) those components
17 of Idaho taxable income which are derived from or related to sources within
18 Idaho for that portion of the tax period during which a taxpayer is not domi-
19 ciled in and is not residing in Idaho. This is to be computed without the
20 deductions for either the standard deduction or itemized deductions or per-
21 sonal exemptions except as provided in subsection (4) of this section.

22 (3) For the purposes of subsections (1) and (2) of this section:

23 (a) Income shall be considered derived from or relating to sources
24 within Idaho when such income is attributable to or resulting from:

25 (i) Any business, trade, profession or occupation conducted
26 or carried on in this state, including the distributive share of
27 partnership income and deductions, and the pro rata share of S cor-
28 poration income and deductions;

29 (ii) The ownership or disposition of any interest in real or tan-
30 gible personal property located in this state;

31 (iii) The ownership or disposition of any interest in intangible
32 personal property only to the extent that such property is em-
33 ployed in a business, trade, profession or occupation conducted
34 or carried on in this state. Provided however, that interest
35 income from an installment sale of real or tangible personal prop-
36 erty shall constitute income from sources within this state to
37 the extent that the property sold was located within this state.
38 Provided further, that interest income received by a partner or
39 shareholder of a partnership or S corporation from such partner-
40 ship or S corporation shall constitute income from sources within
41 this state to the extent that the partnership or S corporation is
42 transacting business within this state;

43 (iv) A resident estate or trust; provided however, that income
44 distributed to beneficiaries of an estate or trust shall consti-
45 tute income from sources within this state only to the extent the
46 income would be Idaho source income if such income had been re-
47 ceived directly by a nonresident individual;

1 (v) A nonresident estate or trust to the extent the income and de-
2 ductions of the nonresident estate or trust were derived from or
3 related to sources within this state;

4 (vi) The conduct of pari-mutuel wagering, charitable gaming or
5 any other form of gambling taking place within this state, except
6 as expressly limited in section 67-7439, Idaho Code;

7 (vii) Gains or losses realized from the sale or other disposi-
8 tion of a partnership interest or stock in an S corporation to the
9 extent of the partnership's or S corporation's Idaho apportion-
10 ment factor in the taxable year immediately preceding the year of
11 sale. In the case of a nonresident individual who sells the non-
12 resident's interest in a publicly traded partnership defined in
13 section 7704 of the Internal Revenue Code doing business in Idaho,
14 the gains or losses shall be determined using the amount described
15 in section 751 of the Internal Revenue Code, multiplied by the ap-
16 portionment factor for the year in which the sale occurred.

17 (b) Notwithstanding the provisions of subsection (3) (a) of this sec-
18 tion, transactions and investments made, placed or directed by Idaho
19 resident registered broker-dealers and investment advisers or institu-
20 tions exempt from registration under the Idaho securities act in secu-
21 rities listed with or through the New York Stock Exchange, the American
22 Stock Exchange or any other stock exchange registered with the United
23 States securities and exchange commission and approved by the director
24 of the department of finance which generate dividends, interest, capi-
25 tal gains or similar profits or returns for nonresidents not otherwise
26 subject to Idaho income taxation shall not result in the intangible
27 property being deemed to have a situs outside the domicile of the owner.

28 (c) Nonresident individuals shall not be taxable on investment income
29 from a qualified investment partnership. For purposes of this para-
30 graph, a "qualified investment partnership" means a partnership, as
31 defined in section 63-3006B, Idaho Code, that derives at least ninety
32 percent (90%) of its gross income from investments that produce income
33 that would not be taxable to a nonresident individual if the investment
34 were held by that individual.

35 (d) Compensation paid by the United States for active service in the
36 armed forces of the United States, performed by an individual not domi-
37 ciled in this state, shall not constitute income derived from or related
38 to sources within this state.

39 (e) The income of nonresident or part-year resident individuals,
40 trusts or estates which is derived from or related to sources both
41 within and without this state shall be attributable to this state in the
42 manner prescribed in the rules of the state tax commission.

43 (4) In computing the Idaho taxable income of a part-year or nonresi-
44 dent individual, trust or estate, the standard deduction or itemized deduc-
45 tions, as defined in section 63-3022(j), Idaho Code, if applicable, and the
46 exemptions, as defined in section 151 of the Internal Revenue Code or any al-
47 lowance in lieu of such deduction, shall be allowed in the proportion that
48 paragraph (a) of this subsection bears to paragraph (b) of this subsection:

49 (a) The Idaho taxable income of the taxpayer modified as follows:

1 (i) No allowance shall be made for either the standard deduction
2 or itemized deductions;

3 (ii) No deduction shall be made for personal exemptions or any al-
4 lowance in lieu of such deduction.

5 (b) The Idaho taxable income as would be calculated for a resident of
6 Idaho modified as follows:

7 (i) No allowance shall be made for either a standard deduction or
8 itemized deductions;

9 (ii) No deduction shall be made for personal exemptions or any al-
10 lowance in lieu of such deduction;

11 (iii) Compensation for active military service in the armed forces
12 shall not be deducted;

13 (iv) Income earned within the original exterior boundaries of any
14 federally created Indian reservation by an enrolled Indian in a
15 federally recognized Indian tribe on a federally recognized In-
16 dian reservation shall be added if not otherwise included.

17 (5) An adjustment may be made to eliminate distortions in the amount
18 of net income attributable to a taxpayer's activities within the state of
19 Idaho. Such deductions shall be limited to circumstances involving item-
20 ized deductions as referred to in subsection (4) of this section and which
21 reflect:

22 (a) A failure to reflect the net income or deduction after reimburse-
23 ments have been received; or

24 (b) A failure to reflect the net amount of mortgage interest income or
25 expense from activities within Idaho.

26 (6) For the purposes of subsections (1) and (2) of this section, de-
27 ductions and adjustments allowed in computing the Idaho taxable income of
28 nonresident and part-year resident individuals, trusts and estates shall be
29 prescribed in the rules of the state tax commission. Such rules shall be
30 based upon:

31 (a) Whether or not the deduction or adjustment is related to the produc-
32 tion of income reportable to Idaho;

33 (b) Whether or not the deduction or adjustment is related to income re-
34 ceived, expenses paid, or events of tax consequence which occurred dur-
35 ings a portion of a taxable year that the taxpayer was domiciled in or re-
36 siding in Idaho; or

37 (c) Any other appropriate basis for making the adjustment. An "appro-
38 priate basis" is one which the state tax commission finds is needed to
39 insure that the amount of Idaho taxable income is fairly and reasonably
40 related to a taxpayer's activities in this state.

41 SECTION 3. That Section 63-3036B, Idaho Code, be, and the same is hereby
42 amended to read as follows:

43 63-3036B. PASS-THROUGH ENTITIES -- BACKUP WITHHOLDING. (1) A pass-
44 through entity, as defined in section 63-3006C, Idaho Code, that is trans-
45 acting business in Idaho during a taxable year shall withhold tax as pre-
46 scribed in this section.

47 (2) For each individual for whom withholding is required under sub-
48 section (4) of section 63-3022L, Idaho Code, the pass-through entity shall
49 withhold tax on ~~any actual distributions of funds from income described in~~

1 ~~subsection (2) of section 63-3022L, Idaho Code~~ the individual's share of
2 income from the pass-through entity required to be included in Idaho taxable
3 income of the individual, at the highest marginal rate applicable for the
4 taxable year under section 63-3024, Idaho Code.

5 (3) A pass-through entity is not required to withhold taxes under this
6 section:

7 (a) In regard to an individual who is a resident of Idaho as defined in
8 section 63-3013, Idaho Code; or

9 (b) In regard to an individual who makes a timely election under section
10 63-3022L, Idaho Code, to have the individual's tax reported and paid on
11 the pass-through entity's return; or

12 (c) If the pass-through entity is a publicly traded partnership, as
13 defined in section 7704 (b) of the Internal Revenue Code, that is treated
14 as a partnership for purposes of the Internal Revenue Code and that has
15 agreed to file an annual information return reporting the name, ad-
16 dress, taxpayer identification number and other information requested
17 by the state tax commission concerning each unitholder whose distribu-
18 tive share of partnership income from Idaho sources is more than five
19 hundred dollars (\$500); or

20 (d) If wWithholding is not required pursuant to a rule adopted under
21 this section.

22 (4) A pass-through entity that is required to withhold tax under this
23 section shall file a withholding return with the state tax commission set-
24 ting forth the amount of income described in subsection (2) of section
25 63-3022L, Idaho Code, the amount of tax withheld under this section and any
26 other information required by the state tax commission. The return shall
27 be filed with the state tax commission on the form and taxes withheld under
28 this section shall be paid to the state tax commission in the time and manner
29 prescribed by rules of the state tax commission. To the extent the state
30 tax commission finds practicable, the rules shall generally conform to the
31 requirements of section 63-3035, Idaho Code.

32 (5) A pass-through entity that is required to withhold tax under the
33 provisions of this section shall furnish a statement to each individual on
34 whose behalf tax is withheld. The statement shall state the amount of tax
35 withheld on behalf of the individual for the taxable year of the pass-through
36 entity. The statement shall be made on a form prescribed by the state tax
37 commission and shall contain any other information required by it.

38 (6) A pass-through entity is liable to this state for amounts of tax re-
39 quired to be withheld and paid under the provisions of this section. A pass-
40 through entity is not liable to an officer, director, or individual owner of
41 an interest in the pass-through entity for amounts required to be withheld
42 under the provisions of this section that were paid to the state tax commis-
43 sion as prescribed in this section. Amounts required to be withheld and paid
44 over to the state tax commission under this section that are not withheld or
45 paid over at the time and in the manner required by the provisions of this
46 section shall be a deficiency in tax as defined in section 63-3044, Idaho
47 Code.

48 SECTION 4. An emergency existing therefor, which emergency is hereby
49 declared to exist, this act shall be in full force and effect on and after its
50 passage and approval, and retroactively to January 1, 2011.