

IN THE HOUSE OF REPRESENTATIVES

HOUSE BILL NO. 296

BY REVENUE AND TAXATION COMMITTEE

AN ACT

RELATING TO THE INCOME TAX CREDIT FOR CAPITAL INVESTMENT; AMENDING SECTION 63-3029B, IDAHO CODE, TO REVISE WHAT A QUALIFIED INVESTMENT SHALL NOT INCLUDE AND TO REVISE REFERENCES TO THE INTERNAL REVENUE CODE; DECLARING AN EMERGENCY AND PROVIDING RETROACTIVE APPLICATION.

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

SECTION 1. That Section 63-3029B, Idaho Code, be, and the same is hereby amended to read as follows:

63-3029B. INCOME TAX CREDIT FOR CAPITAL INVESTMENT. (1) At the election of the taxpayer there shall be allowed, subject to the applicable limitations provided herein as a credit against the income tax imposed by chapter 30, title 63, Idaho Code, an amount equal to the sum of:

(a) The tax credit carryovers; and

(b) The tax credit for the taxable year.

(2) The maximum allowable amount of the credit for the current taxable year shall be three percent (3%) of the amount of qualified investments made during the taxable year.

(3) As used in this section "qualified investment" means certain property which:

(a) (i) Is eligible for the federal investment tax credit, as defined in sections 46(c) and 48 of the Internal Revenue Code subject to the limitations provided for certain regulated companies in section 46(f) of the Internal Revenue Code and is not a motor vehicle under eight thousand (8,000) pounds gross weight; or

(ii) Is qualified broadband equipment as defined in section 63-3029I, Idaho Code; and

(b) Is acquired, constructed, reconstructed, erected or placed into service after December 31, 1981; and

(c) Has a situs in Idaho.

(4) (a) For qualified investments placed in service in 2003 and thereafter, a taxpayer, other than a person whose rate of charge or rate of return, or both, is regulated or limited according to federal or state law, may elect, in lieu of the credit provided by this section, a two (2) year exemption from all taxes on personal property on the qualified investment. The exemption from personal property tax shall apply to the year the election is filed as provided in this section and the immediately following year. The election provided by this paragraph is available only to a taxpayer whose Idaho taxable income, before application of net operating losses carried back or forward, in the second preceding taxable year in which the investment is placed in service is negative.

(b) The election shall be made in the form prescribed by the state tax commission and shall include a specific description and location of

1 all qualified investments placed into service and located in the ju-
2 risdiction of the assessing authority, a designation of the specific
3 assets for which the exemption is claimed, and such other information
4 as the state tax commission may require. The election must be made
5 by including the election form with the listing of personal property
6 required by section 63-302, Idaho Code, or, in the case of operating
7 property assessed under chapter 4, title 63, Idaho Code, with the op-
8 erator's statement required by section 63-404, Idaho Code. Once made
9 the election is irrevocable. If no election is made, the election is not
10 otherwise available. A copy of the election form must also be attached
11 to the original income tax return due for the taxable year in which the
12 claim was made.

13 (c) The state tax commission and the various county assessors are au-
14 thorized to exchange information as necessary to properly coordinate
15 the exemption provided in this subsection. Information disclosed to
16 county officials under this subsection may be used only to determine the
17 validity or amount of a taxpayer's entitlement to the exemption pro-
18 vided in this section, and is not otherwise subject to public disclosure
19 as provided in section 9-340D, Idaho Code.

20 (d) In the event that an investment in regard to which the election un-
21 der this subsection was made is determined by the state tax commission:

- 22 (i) To not be a qualified investment, or
- 23 (ii) To have ceased to qualify during the recapture period, or
- 24 (iii) To be otherwise not qualified for the election,

25 the taxpayer shall be subject to recapture of the property tax benefit.

26 (e) The benefit to be recaptured in subsection (4) (d) of this section
27 shall be computed in the manner required in subsection (7) of this sec-
28 tion and such recapture amount shall be subject to assessment in the
29 same manner as a deficiency in tax under this chapter. For purposes of
30 calculating the recapture, the property tax benefit shall be:

31 (i) In the case of locally assessed property located in a single
32 county or nonapportioned centrally assessed property, the market
33 value of exempted property times the average property tax levy
34 for that county in the year or years for which the exemption was
35 claimed.

36 (ii) In the case of other centrally assessed property and property
37 located in more than one (1) county, the market value of exempted
38 property times the average urban property tax levy of the state
39 as determined by the state tax commission in each of the years for
40 which the exemption was claimed.

41 (f) In the event that a recapture of the exemption is required under
42 this subsection (4), the person claiming the exemption shall report the
43 event to the state tax commission in the manner the state tax commission
44 may by rule require. The report shall be due no later than the due date
45 of that person's income tax return under this chapter for the taxable
46 year in which the event occurs. The recapture amount is due and payable
47 with the report. Any amount of recapture not paid is a deficiency within
48 the meaning of section 63-3044, Idaho Code.

49 (g) All moneys collected by the state tax commission pursuant to this
50 subsection, which amounts are continuously appropriated for this pur-

1 pose, shall be deposited with the state treasurer and placed in the
2 state refund account, as provided by section 63-3067, Idaho Code, to be
3 remitted to the county within which the property was located that was
4 not a qualified investment or ceased to qualify during the recapture
5 period. The county shall distribute this remittance to all appropriate
6 taxing districts based on the proportion each appropriate taxing dis-
7 trict's levy is to the total of all the levies of the taxing districts
8 for the tax code area where the property was located for each year the
9 exemption was granted. If any taxing district is dissolved or disincor-
10 porated, the proportionate share of the remittance to be distributed to
11 that taxing district shall be deposited in the county current expense
12 fund.

13 (h) For purposes of the limitation provided by section 63-802, Idaho
14 Code, moneys received pursuant to this subsection shall be treated as
15 property tax revenue by taxing districts.

16 (5) Notwithstanding the provisions of subsections (1) and (2) of this
17 section, the amount of the credit allowed shall not exceed fifty percent
18 (50%) of the tax liability of the taxpayer. The tax liability of the taxpayer
19 shall be the tax after deducting the credit allowed by section 63-3029, Idaho
20 Code.

21 (6) If the sum of credit carryovers from the credit allowed by subsec-
22 tion (2) of this section and the amount of credit for the taxable year from
23 the credit allowed by subsection (2) of this section exceed the limitation
24 imposed by subsection (5) of this section for the current taxable year, the
25 excess attributable to the current taxable year's credit shall be an invest-
26 ment credit carryover to the fourteen (14) succeeding taxable years. In
27 the case of a group of corporations filing a combined report under section
28 63-3027, Idaho Code, or sections 63-3027B through 63-3027E, Idaho Code,
29 credit earned by one (1) member of the group but not used by that member may be
30 used by another member of the group, subject to the provisions of subsection
31 (5) of this section, instead of carried over. The entire amount of unused
32 credit shall be carried forward to the earliest of the succeeding years,
33 wherein the oldest available unused credit shall be used first, so long as
34 the qualified investment property for which the unused credit was granted
35 still maintains Idaho situs. For a combined group of corporations, credit
36 carried forward may be claimed by any member of the group unless the member
37 who earned the credit is no longer included in the combined group.

38 (7) Any recapture of the credit allowed by subsection (2) of this sec-
39 tion on property disposed of or ceasing to qualify, prior to the close of
40 the recapture period, shall be determined according to the applicable recap-
41 ture provisions of the Internal Revenue Code. In the case of a unitary group
42 of corporations, the increase in tax due to the recapture of investment tax
43 credit must be reported by the member of the group who earned the credit re-
44 gardless of which member claimed the credit against tax.

45 (8) For the purpose of determining whether property placed in service
46 is a "qualified investment" as defined in subsection (3) of this section, the
47 provisions of section 49 of the Internal Revenue Code shall be disregarded.
48 "Qualified investment" shall not include any amount for which a deduction is
49 allowed under section 168(k) or section 179 of the Internal Revenue Code in
50 computing Idaho taxable income.

1 (9) For purposes of this section, property has a situs in Idaho during a
2 taxable year if it is used in Idaho at any time during the taxable year. Prop-
3 erty not used in Idaho during a taxable year does not have a situs in Idaho
4 in the taxable year during which the property is not used in Idaho or in any
5 subsequent taxable year. No credit or carryover of credit is permitted un-
6 der this section if the credit or carryover relates to property that does not
7 have a situs in Idaho during the taxable year for which the credit or carry-
8 over is claimed. The Idaho situs of property must be established by records
9 maintained by the taxpayer which are created reasonably contemporaneously
10 with the use of the property.

11 (10) In the case of property used both in and outside Idaho, the tax-
12 payer, electing to claim the credit provided in this section, must elect to
13 compute the qualified investment in property with a situs in Idaho for all
14 such investments first qualifying during that year in one (1), but only one
15 (1), of the following ways:

16 (a) The amount of each qualified investment in a specific asset shall
17 be separately computed based on the percentage of the actual use of the
18 property in Idaho by using a measure of the use, such as total miles or
19 total machine hours, that most accurately reflects the beneficial use
20 during the taxable year in which it is first acquired, constructed,
21 reconstructed, erected or placed into service; provided, that the as-
22 set is placed in service more than ninety (90) days before the end of
23 the taxable year. In the case of assets acquired, constructed, recon-
24 structed, erected or placed into service within ninety (90) days prior
25 to the end of the taxable year in which the investment first qualifies,
26 the measure of the use of that asset within Idaho for that year shall be
27 based upon the percentage of use in Idaho during the first ninety (90)
28 days of use of the asset;

29 (b) The investment in qualified property used both inside and out-
30 side Idaho during the taxable year in which it is first acquired,
31 constructed, reconstructed, erected or placed into service shall be
32 multiplied by the percent of the investment that would be included in
33 the numerator of the Idaho property factor determined pursuant to sec-
34 tion 63-3027, Idaho Code, for the same year.

35 ~~(11) Only for the purposes of subsections (3)(a) and (8) of this sec-~~
36 ~~tion, references to sections 46, 48 and 49 of the "Internal Revenue Code"~~
37 ~~mean the those sections referred to as they existed in the Internal Revenue~~
38 ~~Code of 1986 prior to November 5, 1990.~~

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