

IN THE HOUSE OF REPRESENTATIVES

HOUSE BILL NO. 582

BY REVENUE AND TAXATION COMMITTEE

AN ACT

1 RELATING TO INCOME TAXATION; AMENDING SECTION 63-3022L, IDAHO CODE, TO RE-  
2 VISE PROVISIONS RELATING TO TAXATION OF INCOME OF OWNERS OF AN INTEREST  
3 IN A PASS-THROUGH ENTITY, TO DEFINE A TERM AND TO PROVIDE ADMINISTRA-  
4 TIVE PROVISIONS; AMENDING SECTION 63-3036B, IDAHO CODE, TO REVISE PRO-  
5 VISIONS REGARDING BACKUP WITHHOLDING FOR PASS-THROUGH ENTITIES; AMEND-  
6 ING SECTION 63-3082, IDAHO CODE, TO PROVIDE A CORRECT TERM; DECLARING AN  
7 EMERGENCY AND PROVIDING RETROACTIVE APPLICATION.  
8

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

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

12 63-3022L. INDIVIDUALS WHO ARE OFFICERS, DIRECTORS OR OWNERS OF AN IN-  
13 TEREST IN A PASS-THROUGH ENTITY OR BENEFICIARIES OF A TRUST OR ESTATE. (1)  
14 Individuals who are ~~officers, directors or~~ not a resident of Idaho as de-  
15 defined in section 63-3014, Idaho Code, but who are owners of an interest in  
16 a pass-through entity, as defined in section 63-3006C, Idaho Code, trans-  
17 acting business in Idaho or who are beneficiaries of a trust or estate  
18 with income taxable in Idaho may elect to have Idaho tax relating to in-  
19 come described in subsection (2) of this section reported and paid by the  
20 pass-through entity- on a return, referred to in this section as a "com-  
21 posite return." Income subject to ~~the election in~~ this subsection shall be  
22 taxed at the rate applicable to corporations. ~~The election in this section~~  
23 ~~is not available to an individual who is an Idaho resident or to a nonresident~~  
24 ~~who has Idaho taxable income in addition to income subject to the election~~  
25 ~~allowed in this section~~ The option to file a composite return and pay tax  
26 for nonresident owners is in lieu of the backup withholding requirements of  
27 section 63-3036B, Idaho Code.

28 (2) ~~The election in~~ provisions of subsection (1) of this section ap-  
29 plies to:-

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

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

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

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

4 (5) For purposes of subsection (2) of this section, deductions, loss  
 5 and credits allowed in computing the tax liability and income attributable  
 6 to an electing the individual owner shall be prescribed in the rules of the  
 7 state tax commission.

8 (4) If a corporation, partnership, trust or estate transacting busi-  
 9 ness in Idaho does not comply with the provisions of section 63-3036B, Idaho  
 10 Code, and also fails to file an Idaho income tax return reporting all of the  
 11 items described in subsection (2) of this section or fails to pay any tax due  
 12 thereon, such corporation, partnership, trust or estate shall be liable for  
 13 tax on such items at the rate applicable to corporations. An entity may rely  
 14 upon information provided by the individual indicating state of residency,  
 15 as prescribed in the rules of the state tax commission.

16 (5) A pass-through entity that files a composite return as described  
 17 in subsection (1) of this section shall include a statement with the return  
 18 showing, and report on the K-1 to each individual whose income is included in  
 19 the return, each individual's share of the income reported on the return and  
 20 the tax paid by the pass-through entity on each individual's share of the in-  
 21 come reported on the return. The statement shall be made on a form prescribed  
 22 by the state tax commission and shall contain any other information required  
 23 by it. If the individual filed an Idaho return, the individual shall in-  
 24 clude the income shown on the K-1 to that individual and shall be entitled to  
 25 a credit for the tax paid by the entity on such income shown on the K-1 to that  
 26 individual.

27 SECTION 2. That Section 63-3036B, Idaho Code, be, and the same is hereby  
 28 amended to read as follows:

29 63-3036B. PASS-THROUGH ENTITIES -- BACKUP WITHHOLDING. (1) A pass-  
 30 through entity, as defined in section 63-3006C, Idaho Code, that is trans-  
 31 acting business in Idaho during a taxable year shall withhold tax as pre-  
 32 scribed in this section.

33 (2) For each ~~nonresident individual for whom withholding is required~~  
 34 ~~under~~ who has income described in subsection (4) of section 63-3022L, Idaho  
 35 Code, the pass-through entity shall withhold tax on the individual's share  
 36 of income from the pass-through entity required to be included in Idaho tax-  
 37 able income of the individual, at the highest marginal rate applicable for  
 38 the taxable year under section 63-3024, Idaho Code.

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

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

43 (b) ~~In regard to an individual who makes a timely election under section~~  
 44 ~~63-3022L, Idaho Code, to have the individual's tax reported and paid on~~  
 45 ~~the pass-through entity's return; or~~

46 ~~(c) If the pass-through entity is a publicly traded partnership, as~~  
 47 ~~defined in section 7704(b) of the Internal Revenue Code, that is treated~~  
 48 ~~as a partnership for purposes of the Internal Revenue Code and that has~~  
 49 ~~agreed to file an annual information return reporting the name, ad-~~

1 dress, taxpayer identification number and other information requested  
 2 by the state tax commission concerning each unitholder whose distribu-  
 3 tive share of partnership income from Idaho sources is more than five  
 4 hundred dollars (\$500); or

5 ~~(c)~~ If withholding is not required pursuant to a rule adopted under  
 6 this section; or

7 (d) In regard to an individual who is not a resident of Idaho as defined  
 8 in section 63-3013, Idaho Code, but for whom the pass-through entity has  
 9 reported and paid the tax relating to said individual on a composite re-  
 10 turn pursuant to section 63-3022L, Idaho Code. An entity may rely upon  
 11 information provided by the individual indicating state of residency as  
 12 prescribed in the rules of the state tax commission.

13 (4) A pass-through entity that is required to withhold tax under this  
 14 section shall file a withholding return with the state tax commission set-  
 15 ting forth the amount of income described in subsection (2) of section  
 16 63-3022L, Idaho Code, the amount of tax withheld under this section and any  
 17 other information required by the state tax commission. The return shall  
 18 be filed with the state tax commission on the form and taxes withheld under  
 19 this section shall be paid to the state tax commission in the time and manner  
 20 prescribed by rules of the state tax commission. To the extent the state  
 21 tax commission finds practicable, the rules shall generally conform to the  
 22 requirements of section 63-3035, Idaho Code.

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

29 (6) A pass-through entity is liable to this state for amounts of tax re-  
 30 quired to be withheld and paid under the provisions of this section. A pass-  
 31 through entity is not liable to an officer, director, or individual owner of  
 32 an interest in the pass-through entity for amounts required to be withheld  
 33 under the provisions of this section that were paid to the state tax commis-  
 34 sion as prescribed in this section. Amounts required to be withheld and paid  
 35 over to the state tax commission under this section that are not withheld or  
 36 paid over at the time and in the manner required by the provisions of this  
 37 section shall be a deficiency in tax as defined in section 63-3044, Idaho  
 38 Code.

39 SECTION 3. That Section 63-3082, Idaho Code, be, and the same is hereby  
 40 amended to read as follows:

41 63-3082. ADDITIONAL TAX REQUIRED WHEN FILING INCOME TAX RETURN. (1)  
 42 Every person required to file an income tax return shall pay a tax of ten dol-  
 43 lars (\$10.00). For this purpose, a husband and wife filing a joint return  
 44 shall be deemed a single person. This tax shall be in the nature of an excise  
 45 tax upon the receipt of the income which requires the filing of such return.

46 (2) When, pursuant to section 63-3022L, Idaho Code, the income tax of an  
 47 ~~individual officer, director, shareholder, partner or member of a corpora-~~  
 48 ~~tion or partnership,~~ a pass-through entity or of a beneficiary of a trust or  
 49 estate is paid by ~~the~~ a corporation, partnership, trust or estate, the cor-

1 poration, partnership, trust or estate shall also pay the tax imposed in sub-  
2 section (1) of this section for each individual.

3 (3) For purposes of this section, a husband and wife filing a joint fed-  
4 eral return may be deemed a single individual.

5 SECTION 4. An emergency existing therefor, which emergency is hereby  
6 declared to exist, this act shall be in full force and effect on and after its  
7 passage and approval, and retroactively to January 1, 2012.