

IN THE HOUSE OF REPRESENTATIVES

HOUSE BILL NO. 377

BY REVENUE AND TAXATION COMMITTEE

AN ACT

1 RELATING TO INCOME TAXATION; AMENDING SECTION 63-3022L, IDAHO CODE, TO PRO-
2 VIDE A CODE REFERENCE AND TO PROVIDE A DEFINITION; AMENDING SECTION
3 63-3036B, IDAHO CODE, TO PROVIDE REFERENCE TO THE DEFINITION OF "INDI-
4 VIDUAL" AND TO MAKE A TECHNICAL CORRECTION; AMENDING SECTION 63-3082,
5 IDAHO CODE, TO PROVIDE TAXATION FOR A PASS-THROUGH ENTITY; DECLARING AN
6 EMERGENCY AND PROVIDING RETROACTIVE APPLICATION.
7

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

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

11 63-3022L. INDIVIDUALS WHO ARE OWNERS OF AN INTEREST IN A PASS-THROUGH
12 ENTITY OR BENEFICIARIES OF A TRUST OR ESTATE. (1) Individuals who are not a
13 resident of Idaho as defined in section 63-3014, Idaho Code, but who are own-
14 ers of an interest in a pass-through entity, as defined in section 63-3006C,
15 Idaho Code, transacting business in Idaho or who are beneficiaries of a trust
16 or estate with income taxable in Idaho may have Idaho tax relating to in-
17 come described in subsection (2) of this section reported and paid by the
18 pass-through entity on a return, referred to in this section as a "composite
19 return." Income subject to this subsection shall be taxed at the rate appli-
20 cable to corporations. The option to file a composite return and pay tax for
21 nonresident owners is in lieu of the backup withholding requirements of sec-
22 tion 63-3036B, Idaho Code.

23 (2) The provisions of subsection (1) of this section ~~applies~~ apply to
24 the share of any income, loss, deduction or credit of a pass-through entity
25 required to be included on such individual's Idaho return.

26 (3) For purposes of subsection (2) of this section, deductions, loss
27 and credits allowed in computing the tax liability and income attributable
28 to the individual owner shall be prescribed in the rules of the state tax com-
29 mission pursuant to section 63-3026A, Idaho Code.

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

38 (5) A pass-through entity that files a composite return as described
39 in subsection (1) of this section shall include a statement with the return
40 showing, and report on the K-1 to each individual whose income is included in
41 the return, each individual's share of the income reported on the return and
42 the tax paid by the pass-through entity on each individual's share of the in-

1 come reported on the return. The statement shall be made on a form prescribed
 2 by the state tax commission and shall contain any other information required
 3 by it. If the individual filed an Idaho return, the individual shall in-
 4 clude the income shown on the K-1 to that individual and shall be entitled to
 5 a credit for the tax paid by the entity on such income shown on the K-1 to that
 6 individual.

7 (6) "Individual" for purposes of this section means a:

8 (a) Natural person;

9 (b) Grantor trust as described in sections 673 through 677 or section
 10 678 of the Internal Revenue Code;

11 (c) Qualified subchapter S trust as described in section 1361(d) (3) of
 12 the Internal Revenue Code; or

13 (d) Single member limited liability company that has not elected to be
 14 classified as a corporation and is treated as a disregarded entity for
 15 federal income tax purposes.

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

18 63-3036B. PASS-THROUGH ENTITIES -- BACKUP WITHHOLDING. (1) A pass-
 19 through entity, as defined in section 63-3006C, Idaho Code, that is trans-
 20 acting business in Idaho during a taxable year shall withhold tax as pre-
 21 scribed in this section.

22 (2) For each nonresident individual who has income described in sub-
 23 section (2) of section 63-3022L, Idaho Code, the pass-through entity shall
 24 withhold tax on the individual's share of income from the pass-through en-
 25 tity required to be included in Idaho taxable income of the individual, at
 26 the highest marginal rate applicable for the taxable year under section
 27 63-3024, Idaho Code.

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

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

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

40 (c) If withholding is not required pursuant to a rule adopted under this
 41 section; or

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

48 (4) A pass-through entity that is required to withhold tax under this
 49 section shall file a withholding return with the state tax commission set-

1 ting forth the amount of income described in subsection (2) of section
 2 63-3022L, Idaho Code, the amount of tax withheld under this section and any
 3 other information required by the state tax commission. The return shall
 4 be filed with the state tax commission on the form and taxes withheld under
 5 this section shall be paid to the state tax commission in the time and manner
 6 prescribed by rules of the state tax commission. To the extent the state
 7 tax commission finds practicable, the rules shall generally conform to the
 8 requirements of section 63-3035, Idaho Code.

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

15 (6) A pass-through entity is liable to this state for amounts of tax re-
 16 quired to be withheld and paid under the provisions of this section. A pass-
 17 through entity is not liable to an officer, director, or individual owner of
 18 an interest in the pass-through entity for amounts required to be withheld
 19 under the provisions of this section that were paid to the state tax commis-
 20 sion as prescribed in this section. Amounts required to be withheld and paid
 21 over to the state tax commission under this section that are not withheld or
 22 paid over at the time and in the manner required by the provisions of this
 23 section shall be a deficiency in tax as defined in section 63-3044, Idaho
 24 Code.

25 (7) For purposes of this section, "individual" shall have the same
 26 meaning as in subsection (6) of section 63-3022L, Idaho Code.

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

29 63-3082. ADDITIONAL TAX REQUIRED WHEN FILING INCOME TAX RETURN. (1)
 30 Every person required to file an income tax return shall pay a tax of ten dol-
 31 lars (\$10.00). For this purpose, a husband and wife filing a joint return
 32 shall be deemed a single person. This tax shall be in the nature of an excise
 33 tax upon the receipt of the income which requires the filing of such return.

34 ~~(2) When, pursuant to section 63-3022L, Idaho Code, the income tax of a~~
 35 ~~pass-through entity or of a beneficiary of a trust or estate is paid by a cor-~~
 36 ~~poration, partnership, trust or estate, the corporation, partnership, trust~~
 37 ~~or estate~~ A pass-through entity as defined in section 63-3006C, Idaho Code,
 38 shall also pay the tax imposed in subsection (1) of this section for each in-
 39 dividual included within section 63-3022L, Idaho Code, on the composite re-
 40 turn.

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

43 SECTION 4. An emergency existing therefor, which emergency is hereby
 44 declared to exist, this act shall be in full force and effect on and after its
 45 passage and approval, and retroactively to January 1, 2014.