

IN THE HOUSE OF REPRESENTATIVES

HOUSE BILL NO. 402

BY REVENUE AND TAXATION COMMITTEE

AN ACT

1 RELATING TO INCOME TAXES; AMENDING CHAPTER 30, TITLE 63, IDAHO CODE, BY THE
2 ADDITION OF A NEW SECTION 63-3021A, IDAHO CODE, TO PROVIDE FOR THE CAL-
3 CULATION OF A NET OPERATING LOSS WHEN INCOME IS DETERMINED BY EXCESS IN-
4 CLUSION INCOME; AMENDING SECTION 63-3027, IDAHO CODE, TO DETERMINE THE
5 INCOME OF A CORPORATION TO BE INCLUDED IN A COMBINED REPORT WHEN ONE OR
6 MORE CORPORATIONS INCLUDED IN A COMBINED REPORT HAVE EXCESS INCLUSION
7 INCOME FOR A TAX YEAR AND TO MAKE TECHNICAL CORRECTIONS; DECLARING AN
8 EMERGENCY AND PROVIDING RETROACTIVE APPLICATION.
9

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

11 SECTION 1. That Chapter 30, Title 63, Idaho Code, be, and the same is
12 hereby amended by the addition thereto of a NEW SECTION, to be known and des-
13 ignated as Section 63-3021A, Idaho Code, and to read as follows:

14 63-3021A. CALCULATION OF NET OPERATING LOSS WHEN TAXABLE INCOME IS
15 DETERMINED BY EXCESS INCLUSION INCOME. When, pursuant to section 63-3011B,
16 Idaho Code, taxable income for any tax year is determined by the amount of
17 excess inclusion income taxable as determined by Internal Revenue Code sec-
18 tion 860E, and when the taxpayer would incur a net operating loss or would be
19 entitled to carry forward a net operating loss pursuant to section 63-3022,
20 Idaho Code, except for the effect of the excess inclusion income reported
21 for that tax year, the net operating loss incurred in that tax year or car-
22 ried forward from an earlier tax year may be taken as deductions in other
23 tax years, subject to the provisions of subsections (b) and (c) of section
24 63-3022, Idaho Code. In computing the net operating loss that may be used in
25 another tax year, the excess inclusion income recognized as taxable income
26 shall be deducted from gross income or taxable income, as provided by trea-
27 sury regulation 1.860E-1 (a) (1).

28 SECTION 2. That Section 63-3027, Idaho Code, be, and the same is hereby
29 amended to read as follows:

30 63-3027. COMPUTING IDAHO TAXABLE INCOME OF MULTISTATE OR UNITARY COR-
31 PORATIONS. The Idaho taxable income of any multistate or unitary corporation
32 transacting business both within and without this state shall be computed in
33 accordance with the rules set forth in this section:

34 (a) As used in this section, unless the context otherwise requires:

35 (1) "Business income" means income arising from transactions and ac-
36 tivity in the regular course of the taxpayer's trade or business and
37 includes income from the acquisition, management, or disposition of
38 tangible and intangible property when such acquisition, management, or
39 disposition constitutes integral or necessary parts of the taxpayer's
40 trade or business operations. Gains or losses and dividend and interest

1 income from stock and securities of any foreign or domestic corporation
2 shall be presumed to be income from intangible property, the acquisi-
3 tion, management, or disposition of which constitutes an integral part
4 of the taxpayer's trade or business; such presumption may only be over-
5 come by clear and convincing evidence to the contrary.

6 (2) "Commercial domicile" means the principal place from which the
7 trade or business of the taxpayer is directed or managed.

8 (3) "Compensation" means wages, salaries, commissions and any other
9 form of remuneration paid to employees for personal services.

10 (4) "Nonbusiness income" means all income other than business income.

11 (5) "Sales" means all gross receipts of the taxpayer not allocated un-
12 der subsections (d) through (h) of this section.

13 (6) "State" means any state of the United States, the District of Co-
14 lumbia, the Commonwealth of Puerto Rico, any territory or possession
15 of the United States, and any foreign country or political subdivision
16 thereof.

17 (b) Any taxpayer having income from business activity which is taxable
18 both within and without this state shall allocate and apportion such net in-
19 come as provided in this section.

20 (c) For purposes of allocation and apportionment of income under this
21 section, a taxpayer is taxable in another state if:

22 (1) In that state he is subject to a net income tax, a franchise tax mea-
23 sured by net income, a franchise tax for the privilege of doing busi-
24 ness, or a corporate stock tax; or

25 (2) That state has jurisdiction to subject the taxpayer to a net income
26 tax regardless of whether, in fact, the state does or does not.

27 (d) Rents and royalties from real or tangible personal property, capi-
28 tal gains interest, dividends, or patent or copyright royalties, to the ex-
29 tent that they constitute nonbusiness income, shall be allocated as provided
30 in subsections (e) through (h) of this section. Allocable nonbusiness in-
31 come shall be limited to the total nonbusiness income received which is in
32 excess of any related expenses which have been allowed as a deduction dur-
33 ing the taxable year. In the case of allocable nonbusiness interest or div-
34 idends, related expenses include interest on indebtedness incurred or con-
35 tinued to purchase or carry assets on which the interest or dividends are
36 nonbusiness income.

37 (e) (1) Net rents and royalties from real property located in this state
38 are allocable to this state.

39 (2) Net rents and royalties from tangible personal property are alloca-
40 ble to this state:

41 (i) If and to the extent that the property is utilized in this
42 state, or

43 (ii) In their entirety if the taxpayer's commercial domicile is in
44 this state and the taxpayer is not organized under the laws of or
45 taxable in the state in which the property is utilized.

46 (3) The extent of utilization of tangible personal property in a state
47 is determined by multiplying the rents and royalties by a fraction, the
48 numerator of which is the number of days of physical location of the
49 property in the state during the rental or royalty period in the taxable
50 year, and the denominator of which is the number of days of physical lo-

1 cation of the property everywhere during all rental or royalty periods
2 in the taxable year. If the physical location of the property during
3 the rental or royalty period is unknown or unascertainable by the tax-
4 payer, tangible personal property is utilized in the state in which the
5 property was located at the time the rental or royalty payer obtained
6 possession.

7 (f) (1) Capital gains and losses from sales of real property located in
8 this state are allocable to this state.

9 (2) Capital gains and losses from sales of tangible personal property
10 are allocable to this state if:

11 (i) The property had a situs in this state at the time of the sale,
12 or

13 (ii) The taxpayer's commercial domicile is in this state and the
14 taxpayer is not taxable in the state in which the property had a
15 situs.

16 (3) Capital gains and losses from sales of intangible personal property
17 are allocable to this state if the taxpayer's commercial domicile is in
18 this state, unless such gains and losses constitute business income as
19 defined in this section.

20 (g) Interest and dividends are allocable to this state if the tax-
21 payer's commercial domicile is in this state unless such interest or divi-
22 dends constitute business income as defined in this section.

23 (h) (1) Patent and copyright royalties are allocable to this state:

24 (i) If and to the extent that the patent or copyright is utilized
25 by the payer in this state, or

26 (ii) If and to the extent that the patent or copyright is utilized
27 by the payer in a state in which the taxpayer is not taxable and the
28 taxpayer's commercial domicile is in this state.

29 (2) A patent is utilized in a state to the extent that it is employed
30 in production, fabrication, manufacturing, or other processing in the
31 state or to the extent that a patent product is produced in the state.
32 If the basis of receipts from patent royalties does not permit alloca-
33 tion to states or if the accounting procedures do not reflect states of
34 utilization, the patent is utilized in the state in which the taxpayer's
35 commercial domicile is located.

36 (3) A copyright is utilized in a state to the extent that printing or
37 other publication originates in the state. If the basis of receipts
38 from copyright royalties does not permit allocation to states or if
39 the accounting procedures do not reflect states of utilization, the
40 copyright is utilized in the state in which the taxpayer's commercial
41 domicile is located.

42 (i) (1) Notwithstanding the election allowed in article III.1 of the
43 multistate tax compact enacted as section 63-3701, Idaho Code, all
44 business income shall be apportioned to this state under subsection (j)
45 of this section by multiplying the income by a fraction, the numerator
46 of which is the property factor plus the payroll factor plus two (2)
47 times the sales factor, and the denominator of which is four (4), except
48 as provided in paragraph (2) of this subsection.

49 (2) If a corporation, or a parent corporation of a combined group filing
50 a combined report under sections 63-3027 and 63-3701, Idaho Code, is an

1 electrical corporation as defined in section 61-119, Idaho Code, or is
2 a telephone corporation as defined in section 62-603, Idaho Code, all
3 business income of the corporation shall be apportioned to this state
4 by multiplying the income by a fraction, the numerator of which is the
5 property factor plus the payroll factor plus the sales factor, and the
6 denominator of which is three (3).

7 (j) (1) In the case of a corporation or group of corporations combined
8 under subsection (t) of this section, Idaho taxable income or loss of
9 the corporation or combined group shall be determined as follows:

10 (i) From the income or loss of the corporation or combined group
11 of corporations, subtract any nonbusiness income, and add any non-
12 business loss, included in the total,

13 (ii) Multiply the amounts determined under paragraph (1) (i) of
14 this subsection by the Idaho apportionment percentage defined in
15 subsection (i) of this section, taking into account, where appli-
16 cable, the property, payroll and sales of all corporations, wher-
17 ever incorporated, which are included in the combined group. The
18 resulting product shall be the amount of business income or loss
19 apportioned to Idaho.

20 (2) To the amount determined as apportioned business income or loss un-
21 der paragraph (1) (ii) of this subsection, add nonbusiness income allo-
22 cable entirely to Idaho under the provisions of this section or subtract
23 nonbusiness loss allocable entirely to Idaho under this section. The
24 resulting sum is the Idaho taxable income or loss of the corporation.

25 (3) In the case of a corporation not subject to subsection (t) of this
26 section, the income or loss referred to in paragraph (1) (i) of this sub-
27 section, shall be the taxable income of the corporation after making ap-
28 propriate adjustments under the provisions of section 63-3022, Idaho
29 Code.

30 (k) The property factor is a fraction, the numerator of which is the av-
31 erage value of the taxpayer's real and tangible personal property owned or
32 rented and used in this state during the tax period, and the denominator of
33 which is the average value of all the taxpayer's real and tangible personal
34 property owned or rented and used during the tax period.

35 (1) Property owned by the taxpayer is valued at its original cost.
36 Property rented by the taxpayer is valued at eight (8) times the net annual
37 rental rate. Net annual rental rate is the annual rental rate paid by the
38 taxpayer less any annual rental rate received by the taxpayer from sub-
39 rentals.

40 (m) The average value of property shall be determined by averaging the
41 values at the beginning and ending of the tax period, but the state tax com-
42 mission may require the averaging of monthly values during the tax period if
43 reasonably required to reflect properly the average value of the taxpayer's
44 property.

45 (n) The payroll factor is a fraction, the numerator of which is the to-
46 tal amount paid in this state during the tax period by the taxpayer for com-
47 pensation, and the denominator of which is the total compensation paid ev-
48 erywhere during the tax period.

49 (o) Compensation is paid in this state if:

50 (1) The individual's service is performed entirely within the state; or

1 (2) The individual's service is performed both within and without the
 2 state, but the service performed without the state is incidental to the
 3 individual's service within the state; or

4 (3) Some of the service is performed in the state and:

5 (i) The base of operations or, if there is no base of operations,
 6 the place from which the service is directed or controlled is in
 7 the state, or

8 (ii) The base of operations or the place from which the service is
 9 directed or controlled is not in any state in which some part of the
 10 service is performed, but the individual's residence is in this
 11 state.

12 (p) The sales factor is a fraction, the numerator of which is the total
 13 sales of the taxpayer in this state during the tax period, and the denomina-
 14 tor of which is the total sales of the taxpayer everywhere during the tax pe-
 15 riod.

16 (q) Sales of tangible personal property are in this state if:

17 (1) The property is delivered or shipped to a purchaser, other than the
 18 United States government, within this state regardless of the f.o.b.
 19 point or other conditions of the sale, or

20 (2) The property is shipped from an office, store, warehouse, factory,
 21 or other place of storage in this state and:

22 (i) The purchaser is the United States government, or

23 (ii) The taxpayer is not taxable in the state of the purchaser.

24 (r) Sales, other than sales of tangible property, are in this state, if:

25 (1) The income-producing activity is performed in this state; or

26 (2) The income-producing activity is performed both in and outside this
 27 state and a greater proportion of the income-producing activity is per-
 28 formed in this state than in any other state, based on costs of perfor-
 29 mance.

30 (s) If the allocation and apportionment provisions of this section do
 31 not fairly represent the extent of the taxpayer's business activity in this
 32 state, the taxpayer may petition for or the state tax commission may require,
 33 in respect to all or any part of the taxpayer's business activity, if reason-
 34 able:

35 (1) Separate accounting, provided that only that portion of general ex-
 36 penses clearly identifiable with Idaho business operations shall be al-
 37 lowed as a deduction;

38 (2) The exclusion of any one (1) or more of the factors;

39 (3) The inclusion of one (1) or more additional factors which will
 40 fairly represent the taxpayer's business activity in this state; or

41 (4) The employment of any other method to effectuate an equitable allo-
 42 cation and apportionment of the taxpayer's income.

43 (t) For purposes of this section and sections 63-3027B through
 44 63-3027E, Idaho Code, the income of two (2) or more corporations, wherever
 45 incorporated, the voting stock of which is more than fifty percent (50%)
 46 owned directly or indirectly by a common owner or owners, when necessary to
 47 accurately reflect income, shall be allocated or apportioned as if the group
 48 of corporations were a single corporation, in which event:

49 (1) The Idaho taxable income of any corporation subject to taxation
 50 in this state shall be determined by use of a combined report which

1 includes the income, determined under ~~sub~~paragraph (2) of this sub-
2 section, of all corporations which are members of a unitary business,
3 allocated and apportioned using apportionment factors for all corpo-
4 rations included in the combined report and methods set out in this
5 section. The use of a combined report does not disregard the separate
6 corporate identities of the members of the unitary group. Each corpora-
7 tion which is transacting business in this state is responsible for its
8 apportioned share of the combined business income plus its nonbusiness
9 income or loss allocated to Idaho, minus its net operating loss carry-
10 over or carryback.

11 (2) The income of a corporation to be included in a combined report
12 shall be determined as follows:

13 (i) For a corporation incorporated in the United States or in-
14 cluded in a consolidated federal corporation income tax return,
15 the income to be included in the combined report shall be the tax-
16 able income for the corporation after making appropriate adjust-
17 ments under the provisions of section 63-3022, Idaho Code;

18 (ii) For a corporation incorporated outside the United States,
19 but not included in subsection (t) (2) (i) of this section, the in-
20 come to be included in the combined report shall be the net income
21 before income taxes of such corporation stated on the profit and
22 loss statements of such corporation which are included within the
23 consolidated profit and loss statement prepared for the group of
24 related corporations of which the corporation is a member, which
25 statement is prepared for filing with the United States securities
26 and exchange commission. If the group of related companies is not
27 required to file such profit and loss statement with the United
28 States securities and exchange commission, the profit and loss
29 statement prepared for reporting to shareholders and subject to
30 review by an independent auditor may be used to obtain net income
31 before income taxes. In the alternative, and subject to reason-
32 able substantiation and consistent application by the group of
33 related companies, adjustments may be made to the profit and loss
34 statements of the corporation incorporated outside the United
35 States, if necessary, to conform such statements to tax account-
36 ing standards as required by the Internal Revenue Code as if such
37 corporation were incorporated in the United States and required to
38 file a federal income tax return, subject to appropriate adjust-
39 ments under the provisions of section 63-3022, Idaho Code; ~~and~~

40 (iii) If the income computation for a group under subparagraphs
41 (i) and (ii) of this ~~subsection~~ paragraph results in a loss, such
42 loss shall be taken into account in other years, subject to the
43 provisions of subsections (b) and (c) of section 63-3022, Idaho
44 Code; and

45 (iv) When one (1) or more corporations included in a combined re-
46 port have excess inclusion income for a tax year that is taxable
47 to those corporations pursuant to section 63-3011B, Idaho Code,
48 the amount of such excess inclusion income shall be reported as
49 the taxable income for those members of the combined group as pro-
50 vided by section 63-3011B, Idaho Code, and any net operating loss

1 for that tax year or carried forward from an earlier tax year may
2 be taken as deductions in other tax years, subject to the provi-
3 sions of subsections (b) and (c) of section 63-3022, Idaho Code.
4 In computing the net operating loss that may be used in another tax
5 year for that corporation or other member of the combined return
6 group, the excess inclusion income recognized as taxable income
7 shall be deducted from gross income, as provided by treasury regu-
8 lation 1.860E-1(a)(1).

9 (u) If compensation is paid in the form of a reasonable cash fee for the
10 performance of management services directly for the United States govern-
11 ment at the Idaho national laboratory or any successor organization, sep-
12 arate accounting for that part of the business activity without regard to
13 other activity of the taxpayer in the state of Idaho or elsewhere shall be
14 required; provided that only that portion of general expenses clearly iden-
15 tifiable with Idaho business operations of that activity shall be allowed as
16 a deduction.

17 SECTION 3. An emergency existing therefor, which emergency is hereby
18 declared to exist, this act shall be in full force and effect on and after its
19 passage and approval, and retroactively to January 1, 2014.