

STATEMENT OF PURPOSE

RS23457

This bill brings Idaho income tax law into compliance with existing federal income tax law. There has been confusion in Idaho on how to treat certain assets – were they "real property" or "personal property". The existing definition in the Idaho Code "land and other tangible property permanently upon affixed to the land" did not match federal law and was also subject to varying interpretations. Therefore, section 63-3022H, Idaho Code, Deduction of Capital Gains, is amended by this bill to match federal code provisions. Proper conservation easements as defined in the Internal Revenue Code, grazing leases, grazing permits if transferred with the base property, and property defined in IRC section 1250(c) as being "section 1250 property" are defined as real property. In the new paragraph (5)(c), the property must be "Section 1250" property, must be conveyed "in perpetuity", and must be a transfer which is required to be in writing by section 9-503, Idaho Code. That section states: 9-503. TRANSFERS OF REAL PROPERTY TO BE IN WRITING. No estate or interest in real property, other than for leases for a term not exceeding one (1) year, nor any trust or power over or concerning it, or in any manner relating thereto, can be created, granted, assigned, surrendered, or declared, otherwise than by operation of law, or a conveyance or other instrument in writing, subscribed by the party creating, granting, assigning, surrendering or declaring the same, or by his lawful agent thereunto authorized by writing. This incorporates a great deal of Idaho law on what real property is, which will again simplify application of the statute.

FISCAL NOTE

This bill will have little or no fiscal impact. The results of this amendment were generally being reached at audit or appeal. To remove the need for, and costs of, such audits or appeals on existing open tax returns, the bill is made retroactive for all tax years beginning on or after January 1, 2010.

Contact:

Robert L. Aldridge, Trust & Estate Professionals of Idaho, Inc.
(208) 336-9880