

IN THE HOUSE OF REPRESENTATIVES

HOUSE BILL NO. 463

BY REVENUE AND TAXATION COMMITTEE

AN ACT

1 RELATING TO INCOME TAXES; AMENDING SECTION 63-3004, IDAHO CODE, TO PROVIDE
2 FOR APPLICABILITY OF THE INTERNAL REVENUE CODE TO DIFFERENT TAX YEARS;
3 AMENDING SECTION 63-3021, IDAHO CODE, TO REVISE THE CALCULATION OF A
4 NET OPERATING LOSS; AMENDING SECTION 63-3022, IDAHO CODE, TO REVISE
5 THE CALCULATION OF IDAHO TAXABLE INCOME FOR CORPORATIONS AND TO REMOVE
6 OBSOLETE LANGUAGE; AMENDING SECTION 63-3024, IDAHO CODE, TO REDUCE THE
7 INDIVIDUAL INCOME TAX RATE; AMENDING SECTION 63-3025, IDAHO CODE, TO
8 REDUCE THE CORPORATE INCOME TAX RATE; AMENDING CHAPTER 30, TITLE 63,
9 IDAHO CODE, BY THE ADDITION OF A NEW SECTION 63-3029L, IDAHO CODE, TO
10 PROVIDE FOR A CHILD TAX CREDIT; AMENDING SECTION 33-5401, IDAHO CODE,
11 TO REVISE A DEFINITION AND TO PROVIDE A CORRECT TAX CODE CITATION; AND
12 DECLARING AN EMERGENCY AND PROVIDING RETROACTIVE APPLICATION.
13

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

15 SECTION 1. That Section 63-3004, Idaho Code, be, and the same is hereby
16 amended to read as follows:

17 63-3004. INTERNAL REVENUE CODE. (a) The term "Internal Revenue Code"
18 means, for taxable years beginning on any day of 2017, the Internal Revenue
19 Code of 1986 of the United States, as amended, and in effect on the first
20 twenty-first day of January December 2017, except that Internal Revenue Code
21 sections 965 and 213 are applied as in effect on December 31, 2017.

22 ~~(b) Provisions of the Internal Revenue Code amended, deleted, or added~~
23 ~~prior to the effective date of the latest amendment to this section shall be~~
24 ~~applicable for Idaho income tax purposes on the effective date provided for~~
25 ~~such amendments, deletions, or additions, including retroactive provisions~~
26 The term "Internal Revenue Code" means, for taxable years beginning on or
27 after the first day of January 2018, the Internal Revenue Code of 1986, as
28 amended, and in effect on the first day of January 2018.

29 (c) For all purposes of the Idaho income tax act, a marriage must be one
30 that is considered valid or recognized under section 28, article III, of the
31 constitution of the state of Idaho and defined in section 32-201, Idaho Code,
32 or as recognized under section 32-209, Idaho Code.

33 (d) Notwithstanding subsection (c) of this section, marriages recog-
34 nized and permitted by the United States supreme court and the ninth circuit
35 court of appeals shall also be recognized for purposes of the Idaho income
36 tax act.

37 SECTION 2. That Section 63-3021, Idaho Code, be, and the same is hereby
38 amended to read as follows:

1 63-3021. NET OPERATING LOSS. (a) The term "net operating loss" means
2 the amount by which Idaho taxable income, after making the modifications
3 specified in subsection (b) of this section, is less than zero (0).

4 (b) Add the following amounts:

5 (1) The amount of any net operating loss deduction included in Idaho
6 taxable income.

7 (2) In the case of a taxpayer other than a corporation:

8 (i) Any amount deducted due to losses in excess of gains from
9 sales or exchanges of capital assets; and

10 (ii) Any deduction for long-term capital gains provided by this
11 chapter.

12 (3) Any deduction allowed under section 151 of the Internal Revenue
13 Code (relating to personal exemption) or any deduction in lieu of any
14 such deduction.

15 (4) Any deduction for the standard or itemized deductions provided for
16 in section 63 of the Internal Revenue Code, or section 63-3022(j), Idaho
17 Code, except for any deduction allowable under section 165(c) (3) of the
18 Internal Revenue Code (relating to casualty losses) pertaining to prop-
19 erty physically located inside Idaho at the time of the casualty.

20 (5) Any amount limited by section 461 of the Internal Revenue Code.

21 (c) Subject to the provisions of sections 381 and 382, Internal Rev-
22 enue Code, Idaho net operating losses incurred by a corporation will survive
23 a merger.

24 (1) Changes in the location of a loss corporation's business or its key
25 employees shall not be treated as a failure to satisfy the continuity of
26 business requirements.

27 (2) If the premerger corporation conducted operations in Idaho and at
28 least one (1) other state, the section 382, Internal Revenue Code, loss
29 limitation is limited further by the premerger loss corporation's Idaho
30 apportionment factor for the last taxable year preceding the date of the
31 merger.

32 SECTION 3. That Section 63-3022, Idaho Code, be, and the same is hereby
33 amended to read as follows:

34 63-3022. ADJUSTMENTS TO TAXABLE INCOME. The additions and subtrac-
35 tions set forth in this section, and in sections 63-3022A through 63-3022U,
36 Idaho Code, are to be applied to the extent allowed in computing Idaho tax-
37 able income:

38 (a) Add any state and local taxes, as defined in section 164 of the In-
39 ternal Revenue Code that are measured by net income, or for which a credit is
40 allowable under section 63-3029, Idaho Code, and paid or accrued during the
41 taxable year adjusted for state or local tax refunds used in arriving at tax-
42 able income.

43 (b) Add the net operating loss deduction used in arriving at taxable in-
44 come.

45 (c) (1) A net operating loss for any taxable year commencing on and af-
46 ter January 1, 2000, but before January 1, 2013, shall be a net oper-
47 ating loss carryback not to exceed a total of one hundred thousand dol-
48 lars (\$100,000) to the two (2) immediately preceding taxable years. At
49 the election of the taxpayer, the two (2) year carryback may be forgone

1 and the loss subtracted from income received in taxable years arising in
2 the next twenty (20) years succeeding the taxable year in which the loss
3 arises in order until exhausted. ~~The election shall be made as under~~
4 ~~section 172(b)(3) of the Internal Revenue Code. An election under this~~
5 ~~subsection must be in the manner prescribed in the rules of the state tax~~
6 ~~commission and once made is irrevocable for the year in which it is made.~~

7 (2) A net operating loss for any taxable year commencing on or after
8 January 1, 2013, shall be a net operating loss carryback not to exceed
9 a total of one hundred thousand dollars (\$100,000) to the two (2) imme-
10 diately preceding taxable years only if an amended return carrying the
11 loss back is filed within one (1) year of the end of the taxable year of
12 the net operating loss that results in such carryback.

13 (3) Any portion of the net operating loss not subtracted from income in
14 the two (2) preceding years may be subtracted from income in the next
15 twenty (20) years succeeding the taxable year in which the loss arises
16 in order until exhausted. The sum of the deductions may not exceed the
17 amount of the net operating loss deduction incurred. The carryback
18 shall be limited to a total of fifty thousand dollars (\$50,000) in the
19 case of an individual filing as married filing separate in the year of
20 the loss.

21 (4) Net operating losses incurred by a corporation during a year in
22 which such corporation did not transact business in Idaho or was not
23 included in a group of corporations combined under subsection (t) of
24 section 63-3027, Idaho Code, may not be subtracted. However, if at
25 least one (1) corporation within a group of corporations combined under
26 subsection (t) of section 63-3027, Idaho Code, was transacting business
27 in Idaho during the taxable year in which the loss was incurred, then the
28 net operating loss may be subtracted. Net operating losses incurred by
29 a person, other than a corporation, in activities not taxable by Idaho
30 may not be subtracted.

31 (5) The term "income" as used in this subsection means Idaho taxable in-
32 come as defined in this chapter as modified by section 63-3021(b)(2),
33 (3) and (4), Idaho Code.

34 (d) In the case of a corporation, add the amount deducted under the pro-
35 visions of sections 243(a) and (c), 244, 245 ~~and, 245A, 246A, 250 and 965~~ of
36 the Internal Revenue Code (relating to dividends received by corporations
37 and other special deductions) as limited by section 246(b)(1) of said code.

38 (e) In the case of a corporation, subtract an amount determined under
39 section 78 of the Internal Revenue Code to be taxable as dividends.

40 (f) Subtract the amount of any income received or accrued during the
41 taxable year which is exempt from taxation by this state, under the provi-
42 sions of any other law of this state or a law of the United States, if not pre-
43 viously subtracted in arriving at taxable income.

44 (g) For the purpose of determining the Idaho taxable income of the bene-
45 ficiary of a trust or of an estate:

46 (1) Distributable net income as defined for federal tax purposes shall
47 be corrected for the other adjustments required by this section.

48 (2) Net operating losses attributable to a beneficiary of a trust or es-
49 tate under section 642 of the Internal Revenue Code shall be a deduction
50 for the beneficiary to the extent that income from the trust or estate

1 would be attributable to this state under the provisions of this chap-
2 ter.

3 (h) In the case of an individual who is on active duty as a full-time
4 officer, enlistee or draftee, with the armed forces of the United States,
5 which full-time duty is or will be continuous and uninterrupted for one hun-
6 dred twenty (120) consecutive days or more, deduct compensation paid by the
7 armed forces of the United States for services performed outside this state.
8 The deduction is allowed only to the extent such income is included in tax-
9 able income.

10 (i) In the case of a corporation, including any corporation included
11 in a group of corporations combined under subsection (t) of section 63-3027,
12 Idaho Code, add any capital loss or passive loss deducted which loss was in-
13 curred during any year in which such corporation did not transact business in
14 Idaho. However, do not add any capital loss deducted if a corporation, in-
15 cluding any corporation in a group of corporations combined under subsection
16 (t) of section 63-3027, Idaho Code, was transacting business in Idaho dur-
17 ing the taxable year in which the loss was incurred. In the case of persons
18 other than corporations, add any capital loss or passive loss deducted which
19 was incurred in activities not taxable by Idaho at the time such loss was in-
20 curred. In computing the income taxable to an S corporation or partnership
21 under this section, deduction shall not be allowed for a carryover or carry-
22 back of a net operating loss provided for in subsection (c) of this section,
23 a passive loss or a capital loss provided for in section 1212 of the Internal
24 Revenue Code.

25 (j) In the case of an individual, there shall be allowed as a deduction
26 from gross income either paragraph (1) or (2) of this subsection at the op-
27 tion of the taxpayer:

28 (1) The standard deduction as defined in section 63 of the Internal Rev-
29 enue Code.

30 (2) Itemized deductions as defined in section 63 of the Internal Rev-
31 enue Code except state or local taxes measured by net income and general
32 sales taxes as either is defined in section 164 of the Internal Revenue
33 Code.

34 (k) Add the taxable amount of any lump sum distribution excluded from
35 gross income for federal income tax purposes under the ten (10) year averag-
36 ing method. The taxable amount will include the ordinary income portion and
37 the amount eligible for the capital gain election.

38 (l) Deduct any amounts included in gross income under the provisions of
39 section 86 of the Internal Revenue Code relating to certain social security
40 and railroad benefits.

41 (m) In the case of a self-employed individual, deduct the actual cost
42 of premiums paid to secure worker's compensation insurance for coverage in
43 Idaho, if such cost has not been deducted in arriving at taxable income.

44 (n) In the case of an individual for any tax period ending on or prior
45 to December 31, 2016, deduct the amount contributed to a college savings pro-
46 gram but not more than four thousand dollars (\$4,000) per tax year. In the
47 case of an individual and for any tax period starting on or after January 1,
48 2017, deduct the amount contributed to a college savings program, but not
49 more than six thousand dollars (\$6,000) per tax year. For those married and
50 filing jointly, deduct the amount contributed to a college savings program,

1 but not more than twice of that allowed for an individual. To be qualified
 2 for this deduction, the contribution must be made during the taxable year and
 3 made to an Idaho college savings program account as described in chapter 54,
 4 title 33, Idaho Code.

5 (o) In the case of an individual, add the amount of a nonqualified with-
 6 drawal from an individual trust account or savings account established pur-
 7 suant to chapter 54, title 33, Idaho Code, less any amount of such nonqual-
 8 ified withdrawal included in the individual's federal gross income pursuant
 9 to section 529 of the Internal Revenue Code.

10 (p) In the case of an individual, add the amount of a withdrawal from an
 11 individual trust account or savings account established pursuant to chapter
 12 54, title 33, Idaho Code, transferred to a qualified tuition program, as de-
 13 fined in section 529 of the Internal Revenue Code, that is operated by a state
 14 other than Idaho. The addition provided in this subsection is limited to the
 15 amount of the contributions to the Idaho individual trust account or savings
 16 account by the account owner that was deducted on the account owner's income
 17 tax return for the year of the transfer and the prior taxable year.

18 SECTION 4. That Section 63-3024, Idaho Code, be, and the same is hereby
 19 amended to read as follows:

20 63-3024. INDIVIDUALS' TAX AND TAX ON ESTATES AND TRUSTS. For taxable
 21 year 2001, and each taxable year thereafter, a tax measured by Idaho taxable
 22 income as defined in this chapter is hereby imposed upon every individual,
 23 trust, or estate required by this chapter to file a return.

24 (a) The tax imposed upon individuals, trusts and estates shall be com-
 25 puted at the following rates:

26 When Idaho taxable income is: The rate is:

27 Less than \$1,000 One and ~~six-tenths~~ one hundred twenty-five
 28 thousandths percent (1.6125%)

29 \$1,000 but less than \$2,000 \$1611.25, plus three and ~~six-tenths~~ one
 30 hundred twenty-five thousandths percent
 31 (3.6125%) of the amount over \$1,000

32 \$2,000 but less than \$3,000 \$5242.50, plus ~~four three~~ and ~~one-tenth~~ six
 33 hundred twenty-five thousandths
 34 percent (4.13.625%) of the amount over
 35 \$2,000

36 \$3,000 but less than \$4,000 \$9378.75, plus ~~five four~~ and ~~one-tenth~~ six
 37 hundred twenty-five thousandths percent
 38 (5.14.625%) of the amount over \$3,000

39 \$4,000 but less than \$5,000 \$144125, plus ~~six five~~ and ~~one-tenth~~ six
 40 hundred twenty-five thousandths percent
 41 (6.15.625%) of the amount over \$4,000

1	When Idaho taxable income is:	The rate is:
2	\$5,000 but less than \$7,500	\$205181.25, plus seven six and one-tenth
3		<u>six hundred twenty-five thousandths</u>
4		percent (7.1 <u>6.625</u> %) of the amount over
5		\$5,000
6	\$7,500 and over	\$383346.88, plus seven six and four-tenths
7		<u>nine hundred twenty-five thousandths</u>
8		percent (7.4 <u>6.925</u> %) of the amount over
9		\$7,500

10 For taxable year 2000 and each year thereafter, the state tax commission
11 shall prescribe a factor which shall be used to compute the Idaho income tax
12 brackets provided in subsection (a) of this section. The factor shall pro-
13 vide an adjustment to the Idaho tax brackets so that inflation will not re-
14 sult in a tax increase. The Idaho tax brackets shall be adjusted as follows:
15 multiply the bracket amounts by the percentage (the consumer price index for
16 the calendar year immediately preceding the calendar year to which the ad-
17 justed brackets will apply divided by the consumer price index for calendar
18 year 1998). For the purpose of this computation, the consumer price index
19 for any calendar year is the average of the consumer price index as of the
20 close of the twelve (12) month period for the immediately preceding calendar
21 year, without regard to any subsequent adjustments, as adopted by the state
22 tax commission. This adoption shall be exempt from the provisions of chapter
23 52, title 67, Idaho Code. The consumer price index shall mean the consumer
24 price index for all U.S. urban consumers published by the United States de-
25 partment of labor. The state tax commission shall annually include the fac-
26 tor as provided in this subsection to multiply against Idaho taxable income
27 in the brackets above to arrive at that year's Idaho taxable income for tax
28 bracket purposes.

29 (b) In case a joint return is filed by husband and wife pursuant to the
30 provisions of section 63-3031, Idaho Code, the tax imposed by this section
31 shall be twice the tax which would be imposed on one-half (1/2) of the aggre-
32 gate Idaho taxable income. For the purposes of this section, a return of a
33 surviving spouse, as defined in section 2(a) of the Internal Revenue Code,
34 and a head of household, as defined in section 2(b) of the Internal Revenue
35 Code, shall be treated as a joint return and the tax imposed shall be twice
36 the tax which would be imposed on one-half (1/2) of the Idaho taxable income.

37 (c) In the case of a trust that is an electing small business trust as
38 defined in section 1361 of the Internal Revenue Code, the special rules for
39 taxation of such trusts contained in section 641 of the Internal Revenue Code
40 shall apply except that the maximum individual rate provided in this section
41 shall apply in computing tax due under this chapter.

42 (d) The state tax commission shall compute and publish Idaho income
43 tax liability for taxpayers at the midpoint of each bracket of Idaho taxable
44 income in fifty dollar (\$50.00) steps to fifty thousand dollars (\$50,000),
45 rounding such calculations to the nearest dollar. Taxpayers having income
46 within such brackets shall file returns based upon and pay taxes according
47 to the schedule thus established. The state tax commission shall promulgate
48 rules defining the conditions upon which such returns shall be filed.

1 SECTION 5. That Section 63-3025, Idaho Code, be, and the same is hereby
2 amended to read as follows:

3 63-3025. TAX ON CORPORATE INCOME. (1) For taxable years commencing on
4 and after January 1, 2001, a tax is hereby imposed on the Idaho taxable income
5 of a corporation, other than an S corporation, which transacts or is autho-
6 rized to transact business in this state or which has income attributable to
7 this state. The tax shall be equal to ~~seven six and four-tenths~~ nine hundred
8 twenty-five thousandths percent (7.46.925%) of Idaho taxable income.

9 (2) In the case of an S corporation that is required to file a return un-
10 der section 63-3030, Idaho Code, a tax is hereby imposed at the rate provided
11 in subsection (1) of this section upon both:

12 (a) Net recognized built-in gain attributable to this state. The
13 amount of net recognized built-in gain attributable to this state shall
14 be computed in accordance with section 1374 of the Internal Revenue
15 Code subject to the apportionment and allocation provisions of section
16 63-3027, Idaho Code.

17 (b) Excess net passive income attributable to this state. The amount of
18 excess net passive income attributable to this state shall be computed
19 in accordance with section 1375 of the Internal Revenue Code subject to
20 the apportionment and allocation provisions of section 63-3027, Idaho
21 Code.

22 (3) The tax imposed by subsection (1) or (2) of this section shall not
23 be less than twenty dollars (\$20.00); provided further that the twenty dol-
24 lar (\$20.00) minimum payment shall not be collected from nonproductive min-
25 ing corporations.

26 (4) The tax imposed by this section shall not apply to corporations
27 taxed pursuant to the provisions of section 63-3025A, Idaho Code.

28 SECTION 6. That Chapter 30, Title 63, Idaho Code, be, and the same is
29 hereby amended by the addition thereto of a NEW SECTION, to be known and des-
30 ignated as Section 63-3029L, Idaho Code, and to read as follows:

31 63-3029L. CHILD TAX CREDIT. (1) For taxable years beginning on or af-
32 ter January 1, 2018, and before January 1, 2026, there shall be allowed to a
33 taxpayer a nonrefundable credit against the tax imposed by this chapter in
34 the amount of one hundred thirty dollars (\$130) with respect to each quali-
35 fying child of the taxpayer. For purposes of this section, the term "quali-
36 fying child" has the meaning as defined in section 24(c) of the Internal
37 Revenue Code. In no event shall more than one (1) taxpayer be allowed this
38 credit for the same qualifying child.

39 (2) In the case of divorced parents or parents who do not live together,
40 if the qualifying child is in the custody of one (1) or both of the child's
41 parents for more than one-half of a calendar year, such child is the qualify-
42 ing child of the custodial parent for the taxable year beginning during such
43 calendar year. However, the child may be the qualifying child of the noncus-
44 todial parent if either of the following requirements are met:

45 (a) A court of competent jurisdiction has unconditionally awarded, in
46 writing, the noncustodial parent the tax credit authorized under this
47 section and the noncustodial parent attaches a copy of the court order
48 to the noncustodial parent's income tax return for the taxable year; or

1 (b) The custodial parent signs a written declaration that such custo-
 2 dial parent will not claim the credit of this section with respect to
 3 such child for any taxable year beginning in such calendar year and the
 4 noncustodial parent attaches such written declaration to the noncusto-
 5 dial parent's income tax return for the taxable year beginning during
 6 such calendar year.

7 SECTION 7. That Section 33-5401, Idaho Code, be, and the same is hereby
 8 amended to read as follows:

9 33-5401. DEFINITIONS. As used in this chapter, the following terms
 10 have the following meanings unless the context clearly denotes otherwise:

11 (1) "Account" means an individual trust account or savings account es-
 12 tablished as prescribed in this chapter.

13 (2) "Account owner" means the person or state or local government or-
 14 ganization designated in the agreement governing the account as having the
 15 right to withdraw moneys from the account before the account is disbursed to
 16 or for the benefit of the designated beneficiary.

17 (3) "Board" means the state college savings program board created in
 18 section 33-5402, Idaho Code.

19 (4) "Designated beneficiary," except as provided in section 33-5404,
 20 Idaho Code, means, with respect to an account, the individual designated at
 21 the time the account is opened as the individual whose higher education ex-
 22 penses are expected to be paid from the account or, if this designated bene-
 23 ficiary is replaced in accordance with section 33-5404, Idaho Code, the re-
 24 placement beneficiary.

25 (5) "Eligible educational institution" shall have the meaning provided
 26 in 26 U.S.C. section 529.

27 (6) "Financial institution" means any state bank, national bank, sav-
 28 ings bank, savings and loan association, credit union, insurance company,
 29 brokerage firm, trust company, mutual fund, investment firm or other similar
 30 entity that is authorized to do business in this state.

31 (7) "Member of the family" shall have the meaning as provided in 26
 32 U.S.C. section 529.

33 (8) "Nonqualified withdrawal" means an account withdrawal that is not
 34 one (1) of the following:

35 (a) A qualified withdrawal;

36 (b) A withdrawal made as the result of the death or disability of the
 37 designated beneficiary of an account;

38 (c) A withdrawal that is made on account of a scholarship as defined
 39 in 26 U.S.C. section 117 or an educational allowance as defined in 26
 40 U.S.C. section 25A(g) (2);

41 (d) A rollover or change of the designated beneficiary.

42 (9) "Person" means an individual, a trust, an estate, a partnership,
 43 an association, a foundation, a guardianship, a corporation, or a custodian
 44 under the Idaho uniform transfers to minors act.

45 (10) "Program" means the one (1) or more college savings ~~program~~
 46 programs established under this chapter.

47 (11) "Qualified higher education expenses" shall have the meaning pro-
 48 vided in 26 U.S.C. section 529-(e)-(3).

1 (12) "Qualified withdrawal" means a withdrawal from an account to pay
2 the qualified higher education expenses of the designated beneficiary of the
3 account, but only if the withdrawal is made in accordance with this chapter.

4 SECTION 8. An emergency existing therefor, which emergency is hereby
5 declared to exist, this act shall be in full force and effect on and after its
6 passage and approval, and retroactively to January 1, 2018.