LEGISLATURE OF THE STATE OF IDAHO

Sixty-fourth Legislature Second Regular Session - 2018

IN THE HOUSE OF REPRESENTATIVES

HOUSE BILL NO. 463

BY REVENUE AND TAXATION COMMITTEE

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

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

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

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

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

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

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

SECTION 2. That Section 63-3021, Idaho Code, be, and the same is hereby amended to read as follows:
63-3021. NET OPERATING LOSS. (a) The term "net operating loss" means the amount by which Idaho taxable income, after making the modifications specified in subsection (b) of this section, is less than zero (0).
(b) Add the following amounts:
(1) The amount of any net operating loss deduction included in Idaho taxable income.
(2) In the case of a taxpayer other than a corporation:
   (i) Any amount deducted due to losses in excess of gains from sales or exchanges of capital assets; and
   (ii) Any deduction for long-term capital gains provided by this chapter.
(3) Any deduction allowed under section 151 of the Internal Revenue Code (relating to personal exemption) or any deduction in lieu of any such deduction.
(4) Any deduction for the standard or itemized deductions provided for in section 63 of the Internal Revenue Code, or section 63-3022(j), Idaho Code, except for any deduction allowable under section 165(c)(3) of the Internal Revenue Code (relating to casualty losses) pertaining to property physically located inside Idaho at the time of the casualty.
(5) Any amount limited by section 461 of the Internal Revenue Code.
(c) Subject to the provisions of sections 381 and 382, Internal Revenue Code, Idaho net operating losses incurred by a corporation will survive a merger.
   (1) Changes in the location of a loss corporation's business or its key employees shall not be treated as a failure to satisfy the continuity of business requirements.
   (2) If the premerger corporation conducted operations in Idaho and at least one (1) other state, the section 382, Internal Revenue Code, loss limitation is limited further by the premerger loss corporation's Idaho apportionment factor for the last taxable year preceding the date of the merger.

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

63-3022. ADJUSTMENTS TO TAXABLE INCOME. The additions and subtractions set forth in this section, and in sections 63-3022A through 63-3022U, Idaho Code, are to be applied to the extent allowed in computing Idaho taxable income:
(a) Add any state and local taxes, as defined in section 164 of the Internal Revenue Code that are measured by net income, or for which a credit is allowable under section 63-3029, Idaho Code, and paid or accrued during the taxable year adjusted for state or local tax refunds used in arriving at taxable income.
(b) Add the net operating loss deduction used in arriving at taxable income.
(c) (1) A net operating loss for any taxable year commencing on and after January 1, 2000, but before January 1, 2013, shall be a net operating loss carryback not to exceed a total of one hundred thousand dollars ($100,000) to the two (2) immediately preceding taxable years. At the election of the taxpayer, the two (2) year carryback may be forgiven
and the loss subtracted from income received in taxable years arising in
the next twenty (20) years succeeding the taxable year in which the loss
arises in order until exhausted. The election shall be made as under
section 172(b)(3) of the Internal Revenue Code. An election under this
subsection must be in the manner prescribed in the rules of the state tax
commission and once made is irrevocable for the year in which it is made.
(2) A net operating loss for any taxable year commencing on or after
January 1, 2013, shall be a net operating loss carryback not to exceed
a total of one hundred thousand dollars ($100,000) to the two (2) imme-
diately preceding taxable years only if an amended return carrying the
loss back is filed within one (1) year of the end of the taxable year of
the net operating loss that results in such carryback.
(3) Any portion of the net operating loss not subtracted from income in
the two (2) preceding years may be subtracted from income in the next
twenty (20) years succeeding the taxable year in which the loss arises
in order until exhausted. The sum of the deductions may not exceed the
amount of the net operating loss deduction incurred. The carryback
shall be limited to a total of fifty thousand dollars ($50,000) in the
case of an individual filing as married filing separate in the year of
the loss.
(4) Net operating losses incurred by a corporation during a year in
which such corporation did not transact business in Idaho or was not
included in a group of corporations combined under subsection (t) of
section 63-3027, Idaho Code, may not be subtracted. However, if at
least one (1) corporation within a group of corporations combined under
subsection (t) of section 63-3027, Idaho Code, was transacting business
in Idaho during the taxable year in which the loss was incurred, then the
net operating loss may be subtracted. Net operating losses incurred by
a person, other than a corporation, in activities not taxable by Idaho
may not be subtracted.
(5) The term "income" as used in this subsection means Idaho taxable in-
come as defined in this chapter as modified by section 63-3021(b)(2),
(3) and (4), Idaho Code.
(d) In the case of a corporation, add the amount deducted under the pro-
visions of sections 243(a) and (c), 244, 245 and 245A, 246A, 250 and 965 of
the Internal Revenue Code (relating to dividends received by corporations
and other special deductions) as limited by section 246(b)(1) of said code.
(e) In the case of a corporation, subtract an amount determined under
section 78 of the Internal Revenue Code to be taxable as dividends.
(f) Subtract the amount of any income received or accrued during the
taxable year which is exempt from taxation by this state, under the provi-
sions of any other law of this state or a law of the United States, if not pre-
viously subtracted in arriving at taxable income.
(g) For the purpose of determining the Idaho taxable income of the bene-
ficiary of a trust or of an estate:
(1) Distributable net income as defined for federal tax purposes shall
be corrected for the other adjustments required by this section.
(2) Net operating losses attributable to a beneficiary of a trust or es-
teate under section 642 of the Internal Revenue Code shall be a deduction
for the beneficiary to the extent that income from the trust or estate
would be attributable to this state under the provisions of this chapter.

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

(i) In the case of a corporation, including any corporation included in a group of corporations combined under subsection (t) of section 63-3027, Idaho Code, add any capital loss or passive loss deducted which loss was incurred during any year in which such corporation did not transact business in Idaho. However, do not add any capital loss deducted if a corporation, including any corporation in a group of corporations combined under subsection (t) of section 63-3027, Idaho Code, was transacting business in Idaho during the taxable year in which the loss was incurred. In the case of persons other than corporations, add any capital loss or passive loss deducted which was incurred in activities not taxable by Idaho at the time such loss was incurred. In computing the income taxable to an S corporation or partnership under this section, deduction shall not be allowed for a carryover or carryback of a net operating loss provided for in subsection (c) of this section, a passive loss or a capital loss provided for in section 1212 of the Internal Revenue Code.

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

   (1) The standard deduction as defined in section 63 of the Internal Revenue Code.

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

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

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

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

(n) In the case of an individual for any tax period ending on or prior to December 31, 2016, deduct the amount contributed to a college savings program but not more than four thousand dollars ($4,000) per tax year. In the case of an individual and for any tax period starting on or after January 1, 2017, deduct the amount contributed to a college savings program, but not more than six thousand dollars ($6,000) per tax year. For those married and filing jointly, deduct the amount contributed to a college savings program,
but not more than twice of that allowed for an individual. To be qualified for this deduction, the contribution must be made during the taxable year and made to an Idaho college savings program account as described in chapter 54, title 33, Idaho Code.

(o) In the case of an individual, add the amount of a nonqualified withdrawal from an individual trust account or savings account established pursuant to chapter 54, title 33, Idaho Code, less any amount of such nonqualified withdrawal included in the individual's federal gross income pursuant to section 529 of the Internal Revenue Code.

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

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

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

(a) The tax imposed upon individuals, trusts and estates shall be computed at the following rates:

When Idaho taxable income is: The rate is:

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

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

$2,000 but less than $3,000 $5242.50, plus four three and one-tenth six hundred twenty-five thousandths percent (4.13625%) of the amount over $2,000

$3,000 but less than $4,000 $9378.75, plus five four and one-tenth six hundred twenty-five thousandths percent (5.44625%) of the amount over $3,000

$4,000 but less than $5,000 $144125, plus six five and one-tenth six hundred twenty-five thousandths percent (6.45625%) of the amount over $4,000
When Idaho taxable income is:  
The rate is:

$5,000 but less than $7,500  $20,5181.25, plus seven six and one-tenth
six hundred twenty-five thousandths
percent (7.16625%) of the amount over
$5,000

$7,500 and over  $38,3346.88, plus seven six and four-tenths
nine hundred twenty-five thousandths
percent (7.46925%) of the amount over
$7,500

For taxable year 2000 and each year thereafter, the state tax commission shall prescribe a factor which shall be used to compute the Idaho income tax brackets provided in subsection (a) of this section. The factor shall provide an adjustment to the Idaho tax brackets so that inflation will not result in a tax increase. The Idaho tax brackets shall be adjusted as follows: multiply the bracket amounts by the percentage (the consumer price index for the calendar year immediately preceding the calendar year to which the adjusted brackets will apply divided by the consumer price index for calendar year 1998). For the purpose of this computation, the consumer price index for any calendar year is the average of the consumer price index as of the close of the twelve (12) month period for the immediately preceding calendar year, without regard to any subsequent adjustments, as adopted by the state tax commission. This adoption shall be exempt from the provisions of chapter 52, title 67, Idaho Code. The consumer price index shall mean the consumer price index for all U.S. urban consumers published by the United States Department of labor. The state tax commission shall annually include the factor as provided in this subsection to multiply against Idaho taxable income in the brackets above to arrive at that year's Idaho taxable income for tax bracket purposes.

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

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

(d) The state tax commission shall compute and publish Idaho income tax liability for taxpayers at the midpoint of each bracket of Idaho taxable income in fifty dollar ($50.00) steps to fifty thousand dollars ($50,000), rounding such calculations to the nearest dollar. Taxpayers having income within such brackets shall file returns based upon and pay taxes according to the schedule thus established. The state tax commission shall promulgate rules defining the conditions upon which such returns shall be filed.
SECTION 5. That Section 63-3025, Idaho Code, be, and the same is hereby amended to read as follows:

63-3025. TAX ON CORPORATE INCOME. (1) For taxable years commencing on and after January 1, 2001, a tax is hereby imposed on the Idaho taxable income of a corporation, other than an S corporation, which transacts or is authorized to transact business in this state or which has income attributable to this state. The tax shall be equal to seven six and four-tenths nine hundred twenty-five thousandths percent (7.46925%) of Idaho taxable income.

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

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

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

(3) The tax imposed by subsection (1) or (2) of this section shall not be less than twenty dollars ($20.00); provided further that the twenty dollar ($20.00) minimum payment shall not be collected from nonproductive mining corporations.

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

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

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

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

(a) A court of competent jurisdiction has unconditionally awarded, in writing, the noncustodial parent the tax credit authorized under this section and the noncustodial parent attaches a copy of the court order to the noncustodial parent's income tax return for the taxable year; or
(b) The custodial parent signs a written declaration that such custodial parent will not claim the credit of this section with respect to such child for any taxable year beginning in such calendar year and the noncustodial parent attaches such written declaration to the noncustodial parent's income tax return for the taxable year beginning during such calendar year.

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

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

(1) "Account" means an individual trust account or savings account established as prescribed in this chapter.

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

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

(4) "Designated beneficiary," except as provided in section 33-5404, Idaho Code, means, with respect to an account, the individual designated at the time the account is opened as the individual whose higher education expenses are expected to be paid from the account or, if this designated beneficiary is replaced in accordance with section 33-5404, Idaho Code, the replacement beneficiary.

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

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

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

(8) "Nonqualified withdrawal" means an account withdrawal that is not one (1) of the following:
   (a) A qualified withdrawal;
   (b) A withdrawal made as the result of the death or disability of the designated beneficiary of an account;
   (c) A withdrawal that is made on account of a scholarship as defined in 26 U.S.C. section 117 or an educational allowance as defined in 26 U.S.C. section 25A(g)(2);
   (d) A rollover or change of the designated beneficiary.

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

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

(11) "Qualified higher education expenses" shall have the meaning provided in 26 U.S.C. section 529(e)(3).
(12) "Qualified withdrawal" means a withdrawal from an account to pay the qualified higher education expenses of the designated beneficiary of the account, but only if the withdrawal is made in accordance with this chapter.

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