

IDAPA 35 - IDAHO STATE TAX COMMISSION

35.01.01 - INCOME TAX ADMINISTRATIVE RULES

DOCKET NO. 35-0101-1301

NOTICE OF RULEMAKING - ADOPTION OF PENDING RULE

EFFECTIVE DATE: This rule has been adopted by the agency and is now pending review by the 2014 Idaho State Legislature for final approval. The pending rule becomes final and effective at the conclusion of the legislative session, unless the rule is approved, rejected, amended or modified by concurrent resolution in accordance with Section 67-5224 and 67-5291, Idaho Code. If the pending rule is approved, amended or modified by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

AUTHORITY: In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Sections 63-105 and 63-3039, Idaho Code.

DESCRIPTIVE SUMMARY: The following is a concise explanatory statement of the reasons for adopting the pending rule and a statement of any change between the text of the proposed rule and the text of the pending rule with an explanation of the reasons for the change:

There are no changes to the pending rule and it is being adopted as originally proposed. The complete text of the proposed rule was published in the October 2, 2013, Idaho Administrative Bulletin, [Vol. 13-10, pages 403 through 409](#).

FISCAL IMPACT: The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year:
n/a

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning this pending rule, contact Cynthia Adrian (208) 334-7670.

DATED this 22nd day of November, 2013.

Cynthia Adrian
Tax Policy Specialist
Idaho State Tax Commission
P.O. Box 36
Boise, ID 83722-0410
(208) 334-7670

THE FOLLOWING NOTICE WAS PUBLISHED WITH THE PROPOSED RULE

AUTHORITY: In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Sections 63-105 and 63-3039, Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 16, 2013.

The hearing site(s) will be accessible to persons with disabilities. Requests for accommodation must be made not later than five (5) days prior to the hearing, to the agency address below.

DESCRIPTIVE SUMMARY: The following is a nontechnical explanation of the substance and purpose of the proposed rulemaking:

Rules 033 and 705, as stated in the Notice of Intent To Promulgate Rules – Negotiated Rulemaking and published in the May 1, 2013, Administrative Bulletin, are not being promulgated and will remain as codified.

Rule 201 is being amended consistent with 2013 House Bill 184 to revise the time period relating to a net operating loss (NOL) carryback, remove language relating to NOL subtracted from income, establish provisions relating to a NOL for a taxable year commencing on or after January 1, 2013, establish provisions relating to the subtraction of a portion of a NOL, revise provisions relating to a claim for credit or refund that relates to an overpayment attributable to a NOL carryback and provide that certain claims for NOLs shall be made pursuant to law.

Rule 195 is being promulgated consistent with 2013 House Bill 2 which provides that certain loss recoveries are deductible for Idaho purposes.

Rule 263 is being amended consistent with 2013 House Bill 139 to provide for a sourcing formula to Idaho for partnership income with exceptions.

Rule 872 is being amended consistent with 2013 House Bill 22 to revise the reporting and paying periods for Idaho income tax withheld by certain employers.

FEE SUMMARY: The following is a specific description of the fee or charge imposed or increased: N/A

FISCAL IMPACT: The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year resulting from this rulemaking:

Rule 263 may have an increase of \$440,000 annually to the General Fund.

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(1), Idaho Code, negotiated rulemaking was conducted. The Notice of Intent to Promulgate Rules - Negotiated Rulemaking

was published in the May 1, 2013, Idaho Administrative Bulletin, volume 13-5, pages 86-90.

INCORPORATION BY REFERENCE: Pursuant to Section 67-5229(2)(a), Idaho Code, the following is a brief synopsis of why the materials cited are being incorporated by reference into this rule: N/A

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Cynthia Adrian at (208) 334-7670.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before Wednesday, October 23, 2013.

DATED this 20th day of August, 2013.

LSO Rules Analysis Memo

THE FOLLOWING IS THE TEXT OF DOCKET NO. 35-0101-1301

195. LOSS RECOVERIES (RULE 195).

Section 63-3022R, Idaho Code. ()

01. In General. A deduction is allowed in taxable years beginning after December 31, 2012 for recoveries of losses deducted from federal taxable income in a prior year that were not allowed or allowable as a deduction in calculating Idaho taxable income to the extent the recovery is included in federal taxable income of the current year. ()

02. No Double Deduction. No deduction is allowed for recovery of an amount not included in federal taxable income of the current year. No deduction is allowed to the extent the loss recovered previously reduced Idaho taxable income. ()

03. Example. A taxpayer claims an itemized deduction of one hundred thousand (\$100,000) on his 2010 federal tax return for a theft loss from a Ponzi-type investment scheme. The deduction results in a federal net operating loss of fifty thousand (\$50,000) for 2010 but no Idaho net operating loss because the itemized deduction is not allowable in calculating an Idaho net operating loss under Section 63-3021, Idaho Code. On his 2013 federal tax return, the taxpayer includes in federal taxable income a recovery of sixty thousand (\$60,000) of the amount previously deducted. Since ten thousand (\$10,000) of the recovered amount reduced 2010 Idaho taxable income and fifty thousand (\$50,000) did not reduce 2010 Idaho taxable income, a fifty thousand (\$50,000) deduction is allowed in calculating 2013 Idaho taxable income. The 2013 Idaho deduction allowed is fifty thousand (\$50,000) since that is the amount that was previously

disallowed for Idaho purposes.

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1956. -- 199. (RESERVED)

(BREAK IN CONTINUITY OF SECTIONS)

201. NET OPERATING LOSS CARRYBACKS AND CARRYOVERS (RULE 201).

Section 63-3022(c), Idaho Code. (7-1-99)

01. Definitions for Purposes of Net Operating Loss Carrybacks and Carryovers. (3-20-97)

a. The term net operating loss deduction means the sum of the Idaho net operating losses carried to another taxable year and subtracted in computing Idaho taxable income. (3-20-97)

b. A net operating loss is absorbed when it has been fully subtracted from Idaho taxable income, as modified by Section 63-3021, Idaho Code. (4-5-00)

02. Adjustments to Net Operating Losses. (3-20-97)

a. The term net operating loss deduction means the sum of the Idaho net operating losses carried to another taxable year and subtracted in computing Idaho taxable income. (3-20-97)

b. A net operating loss is absorbed when it has been fully subtracted from Idaho taxable income, as modified by Section 63-3021, Idaho Code. (4-5-00)

02. Adjustments to Net Operating Losses. (3-20-97)

a. Adjustments to a net operating loss will be determined pursuant to the law applicable to the loss year. (3-20-97)

b. Adjustments to a net operating loss deduction may be made even though the loss year is closed due to the statute of limitations. (3-20-97)

03. Adjustments in Carryback and Carryover Years. (3-20-97)

a. Adjustments to income, including modifications pursuant to Section 63-3021, Idaho Code, in a carryback or carryover year must be made for purposes of determining, how much, if any, of the net operating loss may be carried over to subsequent years. (4-5-00)

b. Adjustments are made pursuant to the law applicable to the carryback or carryover year. (4-5-00)

c. Adjustments may be made even though the year is closed due to the statute of limitations. (3-20-97)

04. Net Operating Loss Carrybacks Application. (3-20-97)()

a. The net operating loss carryback allowed for the entire carryback period may not exceed one hundred thousand dollars (\$100,000) per taxpayer. Each corporation that has a net operating loss and is included in a unitary group is limited to a maximum carryback of one hundred thousand dollars (\$100,000). (4-7-11)

b. The sum of net operating loss deductions must not exceed the amount of the net operating loss incurred. ()

bc. Except as provided in Paragraphs 201.04.**ed.** and 201.04.**f.**, ~~the a~~ net operating loss ~~carryback~~ is applied as follows: (4-7-11)()

i. ~~For n~~Net operating losses incurred in taxable years beginning on and after January 1, 1990, but prior to January 1, 2000, ~~the net operating loss carryback is~~ **are** applied to the third preceding taxable year and if not absorbed, the difference **is** applied to the second preceding taxable year and if not absorbed, the difference **is** applied to the first preceding taxable year. The loss not absorbed in the carryback years is subtracted in the fifteen (15) succeeding taxable years, in order, until absorbed. (4-5-00)()

ii. ~~For n~~Net operating losses incurred in taxable years beginning on and after January 1, 2000, ~~the net operating loss carryback is~~ **but prior to January 1, 2013, are** applied to the second preceding taxable year and if not absorbed, the difference **is** applied to the first preceding taxable year. The loss not absorbed in the carryback years is subtracted in the twenty (20) succeeding taxable years, in order, until absorbed. (4-5-00)()

iii. Net operating losses incurred in taxable years beginning on and after January 1, 2013, are applied to the twenty (20) succeeding taxable years, in order, until absorbed. ()

ed. For taxable years beginning prior to January 1, 2013, ~~if~~ the taxpayer makes a valid election to forego the carryback period as provided in Subsection 201.05, the provisions of **Subsection** 201.04.**bc.** do not apply and the net operating loss carryover is applied as follows: (4-7-11)()

i. For net operating losses incurred in taxable years beginning on and after January 1, 1990, but prior to January 1, 2000, the net operating loss is subtracted in the fifteen (15) succeeding taxable years, in order, until the loss is absorbed. (4-5-00)

ii. For net operating losses incurred in taxable years beginning on and after January 1, 2000, **but prior to January 1, 2013,** the net operating loss is subtracted in the twenty (20) succeeding taxable years, in order, until the loss is absorbed. (4-5-00)()

de. For taxable years beginning prior to January 1, 2013, ~~if~~ the taxpayer fails to make a valid election to forego the carryback period, the net operating loss must be carried back. If a carryback year is closed due to the statute of limitations, the net operating loss carryback may not

result in a refund for the closed taxable year.

(4-7-11)(0)

f. For net operating losses incurred in taxable years beginning on and after January 1, 2013, if an amended return carrying back the loss is filed within one (1) year of the end of the taxable year of the net operating loss, the net operating loss is applied to the second preceding taxable year and if not absorbed, the difference is applied to the first preceding taxable year. The loss not absorbed in the carryback years is subtracted in the twenty (20) succeeding taxable years, in order, until absorbed. ()

05. Timing and Method of Electing to Forego Carryback For Taxable Years Beginning Before January 1, 2013. (3-30-01)()

a. Net operating losses incurred in taxable years beginning on or after January 1, 2010. The election must be made by the due date of the loss year return, including extensions. Once the completed return is filed, the extension period expires. Unless otherwise provided in the Idaho return or in an Idaho form accompanying a return for the taxable year, the election referred to in this Subsection may be made by attaching a statement to the taxpayer's income tax return for the taxable year of the loss. The statement must contain the following information: (4-7-11)

i. The name, address, and taxpayer's social security number or employer identification number; (3-20-97)

ii. A statement that the taxpayer makes the election pursuant to Section 63-3022(c)(1), Idaho Code, to forego the carryback provision; and (7-1-99)

iii. The amount of the net operating loss. (3-20-97)

b. Attaching a copy of the federal election to forego the federal net operating loss carryback to the Idaho income tax return for the taxable year of the loss does not constitute an election for Idaho purposes. (4-7-11)

c. If the election is made on an amended or original return filed subsequent to the time allowed in Paragraph 201.05.a, it is considered untimely and the net operating loss is applied as provided in Paragraph 201.04.**bc**. (4-7-11)

06. Order in Which Losses Are Applied in a Year. Loss carryovers are deducted before deducting any loss carrybacks applicable to the same taxable year. (3-20-97)

07. Documentation Required When Claiming a Net Operating Loss Deduction. A taxpayer claiming a net operating loss deduction for a taxable year must file with his return for that year a concise statement setting forth the amount of the net operating loss deduction claimed and all material and pertinent facts, including a detailed schedule showing the computation of the net operating loss and its carryback or carryover. (3-20-97)

08. Conversion of C Corporation to S Corporation. An S corporation may not carry over or back a net operating loss from a taxable year in which the corporation was a C corporation. However, an S corporation subject to Idaho tax on net recognized built-in gains or excess net passive income may deduct a net operating loss carryover from a taxable year in which

the corporation was a C corporation against its net recognized built-in gain and excess net passive income. (4-7-11)

(BREAK IN CONTINUITY OF SECTIONS)

263. IDAHO SOURCE INCOME OF NONRESIDENT AND PART-YEAR RESIDENT INDIVIDUALS -- DISTRIBUTIVE SHARE OF S CORPORATION AND PARTNERSHIP INCOME (RULE 263).

Section 63-3026A(3), Idaho Code. (3-20-97)

01. In General. The taxable amount of a shareholder's pro rata share or a partner's distributive share of business income, gains, losses, and other pass-through items from an S corporation or partnership operating both within and without Idaho is determined by multiplying each pass-through item by the Idaho apportionment factor of the business. The Idaho apportionment factor is determined pursuant to Section 63-3027, Idaho Code, and related rules. (3-20-97)

02. Nonbusiness Income. Pass-through items of identifiable nonbusiness income, gains, or losses of an S corporation or partnership constitute Idaho source income to the shareholder or partner if allocable to Idaho pursuant to the principles set forth in Section 63-3027, Idaho Code. (3-20-97)

03. Pass-Through Items. Whether a pass-through item of income or loss is business or nonbusiness income is determined at the pass-through entity level. Pass-through items of business income or loss may include: (3-20-97)

- a.** Ordinary income or loss from trade or business activities; (3-20-97)
- b.** Net income or loss from rental real estate activities; (3-20-97)
- c.** Net income or loss from other rental activities; (3-20-97)
- d.** Interest income; (3-20-97)
- e.** Dividends; (3-20-97)
- f.** Royalties; (3-20-97)
- g.** Capital gain or loss; (3-20-97)
- h.** Other portfolio income or loss; (3-20-97)
- i.** Gain or loss recognized pursuant to Section 1231, Internal Revenue Code. (3-20-97)

04. Guaranteed Payments Treated As Compensation. ()

a. Guaranteed payments to an individual partner up to the amount shown in paragraph 264.04.b. in any calendar year is sourced as compensation for services. If a nonresident partner performs services on behalf of the partnership within and without Idaho, the amount included in Idaho compensation is determined as provided in Rule 270 of these rules. ()

b. The 2013 amount is two hundred fifty thousand dollars (\$250,000) and will be adjusted annually. ()

045. Distributions. (2-27-12)

a. Partnerships. The amount of distributions received by a partner that is from Idaho sources is determined by multiplying the taxable amount of distributions pursuant to Section 731, Internal Revenue Code, by the Idaho apportionment factor of the partnership. (2-27-12)

b. S Corporations. The amount of distributions received by a shareholder that is from Idaho sources is determined by multiplying the taxable amount of distributions pursuant to Section 1368, Internal Revenue Code, by the Idaho apportionment factor of the S corporation. (2-27-12)

c. The Idaho apportionment factor for purposes of Paragraphs 263.05.a. and 263.05.b. of this rule is determined pursuant to Section 63-3027, Idaho Code, and related rules. (2-27-12)

(BREAK IN CONTINUITY OF SECTIONS)

872. REPORTING AND PAYING STATE INCOME TAX WITHHOLDING (RULE 872).

Sections 63-3035 and 63-3036, Idaho Code. (3-20-97)

01. Payment of State Income Tax Withheld. (4-6-05)

a. In General. An employer ~~shall~~ **must** remit monthly any state income tax withheld. These monthly payments are due on or before the 20th day of the following month. However, employers who owe seven hundred fifty dollars (\$750) or less per calendar quarter may, at the discretion of the Tax Commission, be allowed to remit the tax withheld on or before the last day of the month following the end of the quarter. Employers who owe less than seven hundred fifty dollars (\$750) annually may be allowed to remit the tax withheld annually on or before January 31. When a filing cycle is changed, the change will take effect on January 1 of the following year. (5-8-09)()

b. Split-Monthly Filers. (4-6-05)

i. An employer who withholds state income taxes that meet or exceed the monthly or

annual threshold amounts provided in Section 63-3035, Idaho Code, and listed in Subparagraph 872.01.b.ii., of this rule, *shall will* remit the tax withheld based on split-monthly withholding periods. *The first split-monthly withholding period begins with on the first day of the month and ends on the 15th day of the same month with payment made not later than the 20th day of the same month. The second period begins on the 16th day of the month and ends on the 15th last day of the following same month. with Ppayments for a split-monthly withholding period shall be made no later than five (5) the fifth days after the end of the withholding period following month.* (4-6-05)()

ii. Threshold amounts:

Withholding Periods Beginning	Monthly Threshold Amounts	Annual Threshold Amounts
Prior to January 1, 2004	\$5,000	\$60,000
On or After January 1, 2004, but Before July 1, 2005	\$6,000	\$72,000
On or After July 1, 2005	\$20,000	\$240,000

(4-6-05)

c. Farmer-Employers. Generally an employer who is a farmer *shall will* remit state income tax withheld on or before the last day of January. However, an employer who is a farmer *shall will* remit the state income tax withheld on or before the last day of the month following the end of the quarter if he is a covered employer required to file with the Department of Commerce and Labor. (4-11-06)()

02. Filing of Annual Reconciliation Returns. (4-6-05)

a. In General. An employer *shall must* file an annual reconciliation return for any calendar year in which the employer had an active Idaho withholding account or withheld Idaho income taxes. Such return *shall will*: (5-8-09)()

i. Report payroll paid during the preceding calendar year; and (4-6-05)

ii. Reconcile the state income tax withheld during the preceding calendar year with the tax remitted for the preceding calendar year. (4-6-05)

b. Due Date of Reconciliation Returns. The annual reconciliation return *shall must* be filed with the Forms W-2 on or before such date as required for filing of the W-2. See Rule 874 of these rules. The Tax Commission may require a shorter filing period and due date. (5-8-09)()

c. Zero Tax Returns. For reporting periods in which the employer had no payroll or withheld no tax, the annual reconciliation return *shall must* be completed and filed by the due date. (4-6-05)()

03. Extension of Time to Pay or File Returns. The Tax Commission may allow a one (1) month extension of time to make a monthly or quarterly payment or to file the annual

reconciliation return. (4-6-05)

a. The employer ~~shall~~ **must** file a written request by the due date of the payment or annual reconciliation return that identifies the reason for the extension and includes the required minimum payment. The minimum payment ~~shall~~ **must** be at least ninety percent (90%) of the tax withheld for the period or one hundred percent (100%) of the tax withheld for the same period of the prior year. (~~4-6-05~~)()

b. The employer ~~shall~~ **must** file the annual reconciliation return within one (1) month of the due date. The tax paid with the extension request ~~shall~~ **must** be shown on the payment line of the return. Interest from the due date applies to any additional tax due. (~~4-6-05~~)()

04. Valid Returns. All withholding returns and other documents required to be filed pursuant to Sections 63-3035 and 63-3036, Idaho Code, and this rule ~~shall~~ **will** be filed using the proper forms as prescribed by the Tax Commission. The forms ~~shall~~ **will** include the taxpayer's name, signature, withholding account number, and federal employer identification number. Returns that fail to meet these requirements are invalid and may be returned to the taxpayer to be refiled. Failure to file a valid return by the due date may cause interest and penalties to be imposed. (~~3-20-97~~)()

IDAPA 35 - IDAHO STATE TAX COMMISSION

35.01.01 - INCOME TAX ADMINISTRATIVE RULES

DOCKET NO. 35-0101-1302

NOTICE OF RULEMAKING - ADOPTION OF PENDING RULE

EFFECTIVE DATE: This rule has been adopted by the agency and is now pending review by the 2014 Idaho State Legislature for final approval. The pending rule becomes final and effective at the conclusion of the legislative session, unless the rule is approved, rejected, amended or modified by concurrent resolution in accordance with Section 67-5224 and 67-5291, Idaho Code. If the pending rule is approved, amended or modified by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

AUTHORITY: In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Sections 63-105 and 63-3039, Idaho Code.

DESCRIPTIVE SUMMARY: The following is a concise explanatory statement of the reasons for adopting the pending rule and a statement of any change between the text of the proposed rule and the text of the pending rule with an explanation of the reasons for the change:

There are no changes to the pending rule and it is being adopted as originally proposed. The complete text of the proposed rule was published in the October 2, 2013, Idaho Administrative Bulletin, [Vol. 13-10, pages 410 through 441](#).

FISCAL IMPACT: The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year:
N/A

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning this pending rule, contact Cynthia Adrian (208) 334-7670.

DATED this 22nd day of November, 2013.

Cynthia Adrian
Tax Policy Specialist
Idaho State Tax Commission
P.O. Box 36
Boise, ID 83722-0410
(208) 334-7670

THE FOLLOWING NOTICE WAS PUBLISHED WITH THE PROPOSED RULE

AUTHORITY: In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Sections 63-105 and 63-3039, Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 16, 2013.

The hearing site(s) will be accessible to persons with disabilities. Requests for accommodation must be made not later than five (5) days prior to the hearing, to the agency address below.

DESCRIPTIVE SUMMARY: The following is a nontechnical explanation of the substance and purpose of the proposed rulemaking:

Rule 040 is being amended to clarify the definition of the term “place of abode” with regard to federal foreign income exclusion.

Rule 045 is being amended consistent with 2013 House Bill 139 to add a statutory reference to the heading and add subsection 06 to address pension income.

Rule 075 is being amended to add the tax brackets for calendar year 2013 and remove the information for calendar year 2008 so only five years of historical data is retained in the rule.

Rule 105 is being amended consistent with 2013 House Bill 4 regarding income adjustment addition of credit for taxes paid to other states.

Rules 120 & 254 are being amended to conform to 2013 House Bill 2 to add the deduction for certain loss recoveries and to conform to 2013 House Bill 4 to add that the deduction for donation of technological equipment is limited to the lesser of cost, fair market value, or Idaho taxable income of the taxpayer.

Rule 121 is being amended consistent with 2013 House Bill 184 to revise the time period relating to a net operating loss (NOL) carryback, remove language relating to NOL subtracted from income, establish provisions relating to a NOL for a taxable year commencing on or after January 1, 2013, establish provisions relating to the subtraction of a portion of a NOL, revise provisions relating to a claim for credit or refund that relates to an overpayment attributable to a NOL carryback and provide that certain claims for NOLs shall be made pursuant to law.

Rule 125 is being amended to change the word “or” in the last sentence of Subsection 01 to “and”.

Rule 140 is being amended consistent with 2013 House Bill 4 to provide that in order to qualify for the energy efficiency upgrade deduction the residence must be in Idaho and be the primary residence of the taxpayer.

Rule 180 is being amended consistent with 2013 House Bill 4 to provide that a deduction for

technological equipment donations cannot exceed the taxpayer's cost of the technological equipment donated nor reduce Idaho taxable income to less than zero.

Rule 194 is being amended to conform with a federal law change for medical expense itemization minimums.

Rule 251 is being amended to clarify that total income is federal total income.

Rule 252 is being amended to remedy the distortive percentage that occurs when the ratio of Idaho total income to total income is used to allow certain deductions to part-year or nonresidents.

Rules 270, 280 & 291 are being amended consistent with 2013 House Bill 139 to provide for a sourcing formula to Idaho for partnership income with exceptions.

Rule 710 is being amended consistent with 2011 House Bill 296 to add that the cost of property that the taxpayer elects to deduct as bonus depreciation is not qualified for the Idaho Investment Tax Credit when the bonus depreciation was also allowed in computing depreciation for Idaho.

Rule 714 is being amended consistent with 2012 House Bill 438 which changed the requirements for claiming investment tax credit carryovers. Qualifying property must remain in Idaho during the recapture period (first 5 years), not during the carryover period (14 succeeding years).

Rule 771 is being amended to add tax year 2012 and the applicable grocery credit amounts to the table.

Rule 801 is being amended to clarify that the election under Section 63-3022L is available only for taxable years beginning prior to January 1, 2012.

Rule 855 is being amended to clarify that the permanent building fund is paid by pass-through entities paying Idaho income tax for individuals on a composite return but not when the entity pays backup withholding for individuals.

Rule 880 is being amended consistent with 2013 House Bill 4 & 2013 House Bill 184 in regard to credit and refund rules.

FEE SUMMARY: The following is a specific description of the fee or charge imposed or increased: N/A

FISCAL IMPACT: The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year resulting from this rulemaking: N/A

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted because the changes were of a simple nature or complied with statutory changes.

INCORPORATION BY REFERENCE: Pursuant to Section 67-5229(2)(a), Idaho Code, the following is a brief synopsis of why the materials cited are being incorporated by reference into this rule: N/A

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Cynthia Adrian at (208) 334-7670.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before Wednesday, October 23, 2013.

DATED this 29th day of August, 2013.

LSO Rules Analysis Memo

THE FOLLOWING IS THE TEXT OF DOCKET NO. 35-0101-1302

040. PART-YEAR RESIDENT (RULE 040).

Section 63-3013A, Idaho Code.

(3-20-97)

01. In General. A part-year Idaho resident is any individual who resides in or is domiciled in Idaho for only part of the taxable year. (3-20-97)

a. An individual who has a place of abode in Idaho and is present in Idaho for other than a temporary or transitory purpose is deemed to reside in Idaho. (3-20-97)

b. For the rules relating to the determination of an individual's domicile, see Subsection 030.02 of these rules. (7-1-98)

02. Temporary or Transitory Purpose. For purposes of this rule, an individual is not residing in Idaho if he is present in Idaho only for a temporary or transitory purpose. Likewise, an individual is not residing outside Idaho merely by his temporary or transitory absence from Idaho. (3-20-97)

a. The length of time in Idaho is only one factor in determining whether an individual is present for other than a temporary or transitory purpose. Other factors to be considered include business activity or employment conducted in Idaho, banking and other financial dealings taking place in Idaho, and family and social ties in Idaho. In general, an individual is present for other than a temporary or transitory purpose if his stay is related to a significant business, employment or financial purpose or the individual maintains significant family or social ties in Idaho. (3-20-97)

b. An individual is present in Idaho only for a temporary or transitory purpose if he does not engage in any activity or conduct in Idaho other than that of a vacationer, seasonal visitor, tourist, or guest. (3-20-97)

c. Presence in Idaho for ninety (90) days or more during a taxable year is presumed to be for other than a temporary or transitory purpose. To overcome the presumption, the individual must show that his presence was consistent with that of a vacationer, seasonal visitor, tourist or guest. (3-20-97)

03. Place of Abode. An individual who owns a home in Idaho will not be treated as having a place of abode at that residence if the individual does not have the right to immediately occupy that residence. This definition does not apply for purposes of the federal foreign income exclusion and only applies for purposes of Sections 63-3013 and 63-3013A, Idaho Code. (~~7-1-98~~)()

a. Example. An individual who is not domiciled in Idaho owns a home in Idaho that is leased to a third party for the entire taxable year. Since the individual does not have the right to immediately occupy the home, it is not treated as that individual's abode for purposes of determining his residency status. (7-1-98)

b. Example. An individual who is not domiciled in Idaho owns a home in Idaho that is offered for rent. For the first three (3) months of the taxable year the home is not rented and remains vacant. During the final nine (9) months of the taxable year the home is leased to a third party. The individual will be treated as having a place of abode in Idaho during the first three (3) months of the taxable year since the individual had the right to immediately occupy the home. If the individual is present in Idaho during the first three (3) months of the taxable year for other than a temporary or transitory purpose, that individual will be deemed to reside in Idaho. (7-1-98)

041. -- 044. (RESERVED)

045. NONRESIDENT (RULE 045). Sections 63-3014, 63-3026A, Idaho Code. (~~3-20-97~~)()

01. Traveling Salesmen. (3-20-97)

a. A nonresident salesman who works in Idaho is subject to Idaho taxation regardless of the location of his post of duty or starting point. (3-20-97)

b. If an individual is paid on a mileage basis, the gross income from sources within Idaho includes that portion of the total compensation for personal services that the number of miles traveled in Idaho bears to the total number of miles traveled within and without Idaho. If the compensation is based on some other measure, such as hours, the total compensation for personal services must be apportioned between Idaho and other states and foreign countries in a manner that allocates to Idaho the portion of total compensation reasonably attributable to personal services performed in Idaho. See Rule 270 of these rules. (3-30-01)

02. Motor Carrier Employees Covered by Title 49, Section 14503, United States Code. Compensation paid to an interstate motor carrier employee who has regularly assigned duties in more than one state is subject to income tax only in the employee's state of residence. A motor carrier employee is defined in Title 49, Section 31132(2), United States Code, and includes: (7-1-99)

- a. An operator, including an independent contractor, of a commercial motor vehicle; (3-20-97)
- b. A mechanic; (3-20-97)
- c. A freight handler; and (3-20-97)
- d. An individual, other than an employer, who in the course of his employment directly affects commercial motor vehicle safety. Employees of the United States, a state, or a local government are not included. Employer, as used in this rule, means a person engaged in business affecting interstate commerce that owns or leases a commercial motor vehicle in connection with that business, or assigns an employee to operate it. See Title 49, Section 31132(3), United States Code. (3-20-97)

03. Water Carrier Employees Covered by Title 46, Section 11108, United States Code. Compensation paid to a water carrier employee is subject to income tax only in the employee's state of residence if such employee: (3-20-04)

- a. Is engaged on a vessel to perform assigned duties in more than one (1) state as a pilot licensed under Title 46, Section 7101, or licensed or authorized under the laws of a state; or (3-20-04)
- b. Performs regularly assigned duties while engaged as a master, officer, or crewman on a vessel operating on the navigable waters of more than one (1) state. (3-20-04)

04. Air Carrier Employees Covered by Title 49, Section 40116(f), United States Code. Compensation paid to an air carrier employee who has regularly assigned duties on aircraft in more than one state is subject to the income tax laws of only: (7-1-99)

- a. The employee's state of residence, and (3-20-97)
- b. The state in which the employee earns more than fifty percent (50%) of the pay from the air carrier. (3-20-97)

05. Rail Carrier Employees Covered by Title 49, Section 11502, United States Code. Compensation paid to an interstate rail carrier employee who performs regularly assigned duties on a railroad in more than one (1) state is subject to income tax only in the employee's state of residence. (7-1-99)

06. Pension Income Covered by Title 4, Section 114, United States Code. Pension income, including certain guaranteed payments made to a retired partner of a partnership, per

Title 4, Section 114(b)(1)(I), United States Code, is subject to income tax only in the individual's state of residence or domicile. ()

(BREAK IN CONTINUITY OF SECTIONS)

075. TAX ON INDIVIDUALS, ESTATES, AND TRUSTS (RULE 075).

Section 63-3024, Idaho Code. (3-20-04)

01. In General. The tax rates applied to the Idaho taxable income of an individual, trust or estate for the latest five (5) years are identified in Subsection 075.03 of this rule. The Idaho income tax brackets are adjusted for inflation. The maximum tax rate as listed for the applicable taxable year in Subsection 075.03 of this rule applies in computing the tax attributable to the S corporation stock held by an electing small business trust. See Rule 078 of these rules. (4-7-11)

02. Tax Computation. (5-3-03)

a. The tax rates and income tax brackets listed in Subsection 075.03 of this rule are those for a single individual or married individuals filing separate returns. (4-6-05)

b. The tax imposed on individuals filing a joint return, filing as a surviving spouse, or filing as a head of household is twice the tax that would be imposed on one-half (1/2) of the total Idaho taxable income of a single individual. (4-7-11)

c. For example, if a married couple filing a joint return reports Idaho taxable income of thirty thousand dollars (\$30,000), the tax is computed as if they had taxable income of fifteen thousand dollars (\$15,000). The tax amount is multiplied by two (2). (4-7-11)

03. Tables Identifying the Idaho Tax Rates and Income Tax Brackets. (3-20-04)

~~*a. For taxable years beginning in 2008:*~~

IF IDAHO TAXABLE INCOME IS		IDAHO TAX		
<i>At least</i>	<i>But less than</i>	<i>Is</i>	<i>Plus</i>	
\$1.00	\$1,272.00	\$0	+	1.6% of taxable income
\$1,272.00	\$2,544.00	\$20.35	+	3.6% of the amount over \$1,272.00
\$2,544.00	\$3,816.00	\$66.15	+	4.1% of the amount over \$2,544.00
\$3,816.00	\$5,088.00	\$118.30	+	5.1% of the amount over \$3,816.00
\$5,088.00	\$6,360.00	\$183.17	+	6.1% of the amount over \$5,088.00
\$6,360.00	\$9,540.00	\$260.77	+	7.1% of the amount over \$6,360.00
\$9,540.00	\$25,441.00	\$486.55	+	7.4% of the amount over \$9,540.00

IF IDAHO TAXABLE INCOME IS		IDAHO TAX	
At least	But less than	Is	Plus
\$25,441.00 or more		\$1,663.19	+ 7.8% of the amount over \$25,441.00

~~Tax and bracket amounts were calculated using consumer price index amounts published on March 12, 2008.~~

(4-7-11)

ba. For taxable years beginning in 2009:

IF IDAHO TAXABLE INCOME IS		IDAHO TAX	
At least	But less than	Is	Plus
\$1	\$1,321	\$0	+ 1.6% of taxable income
\$1,321	\$2,642	\$21.13	+ 3.6% of the amount over \$1,321
\$2,642	\$3,963	\$68.69	+ 4.1% of the amount over \$2,642
\$3,963	\$5,284	\$122.84	+ 5.1% of the amount over \$3,963
\$5,284	\$6,604	\$190.21	+ 6.1% of the amount over \$5,284
\$6,604	\$9,907	\$270.78	+ 7.1% of the amount over \$6,604
\$9,907	\$26,418	\$505.24	+ 7.4% of the amount over \$9,907
\$26,418 or more		\$1,727.05	+ 7.8% of the amount over \$26,418

Tax and bracket amounts were calculated using consumer price index amounts published on April 28, 2009.

(4-7-11)

eb. For taxable years beginning in 2010:

IF IDAHO TAXABLE INCOME IS		IDAHO TAX	
At least	But less than	Is	Plus
\$1	\$1,316	\$0	+ 1.6% of taxable income
\$1,316	\$2,632	\$21.06	+ 3.6% of the amount over \$1,316
\$2,632	\$3,948	\$68.44	+ 4.1% of the amount over \$2,632
\$3,948	\$5,264	\$122.40	+ 5.1% of the amount over \$3,948
\$5,264	\$6,580	\$189.52	+ 6.1% of the amount over \$5,264
\$6,580	\$9,870	\$269.80	+ 7.1% of the amount over \$6,580
\$9,870	\$26,320	\$503.39	+ 7.4% of the amount over \$9,870
\$26,320 or more		\$1,720.69	+ 7.8% of the amount over \$26,320

Tax and bracket amounts were calculated using consumer price index amounts published on May 4, 2010.

(4-7-11)

dc. For taxable years beginning in 2011:

IF IDAHO TAXABLE INCOME IS		IDAHO TAX		
At least	But less than	Is	Plus	
\$1	\$1,338	\$0	+	1.6% of taxable income
\$1,338	\$2,676	\$21.41	+	3.6% of the amount over \$1,338
\$2,676	\$4,014	\$69.58	+	4.1% of the amount over \$2,676
\$4,014	\$5,352	\$124.44	+	5.1% of the amount over \$4,014
\$5,352	\$6,690	\$192.68	+	6.1% of the amount over \$5,352
\$6,690	\$10,035	\$274.30	+	7.1% of the amount over \$6,690
\$10,035	\$26,760	\$511.80	+	7.4% of the amount over \$10,035
\$26,760 or more		\$1,749.45	+	7.8% of the amount over \$26,760

Tax and bracket amounts were calculated using consumer price index amounts published on May 24, 2011.

(2-27-12)

ed. For taxable years beginning in 2012:

IF IDAHO TAXABLE INCOME IS		IDAHO TAX		
At least	But less than	Is	Plus	
\$1	\$1,380	\$0	+	1.6% of taxable income
\$1,380	\$2,760	\$22.08	+	3.6% of the amount over \$1,380
\$2,760	\$4,140	\$71.76	+	4.1% of the amount over \$2,760
\$4,140	\$5,520	\$128.34	+	5.1% of the amount over \$4,140
\$5,520	\$6,900	\$198.72	+	6.1% of the amount over \$5,520
\$6,900	\$10,350	\$282.90	+	7.1% of the amount over \$6,900
\$10,350 or more		\$527.85	+	7.4% of the amount over \$10,350

Tax and bracket amounts were calculated using consumer price index amounts published on April 13, 2012.

(4-4-13)

e. For taxable years beginning in 2013:

IF IDAHO TAXABLE INCOME IS		IDAHO TAX		
At least	But less than	Is		Plus
\$1	\$1,409	\$0	+	1.6% of taxable income
\$1,409	\$2,818	\$22.54	+	3.6% of the amount over \$1,409
\$2,818	\$4,227	\$73.26	+	4.1% of the amount over \$2,818
\$4,227	\$5,636	\$131.03	+	5.1% of the amount over \$4,227
\$5,636	\$7,045	\$202.89	+	6.1% of the amount over \$5,636
\$7,045	\$10,568	\$288.84	+	7.1% of the amount over \$7,045
\$10,568 or more		\$538.94	+	7.4% of the amount over \$10,568

Tax and bracket amounts were calculated using consumer price index amounts published on April 13, 2013.

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(BREAK IN CONTINUITY OF SECTIONS)

105. ADJUSTMENTS TO TAXABLE INCOME -- ADDITIONS REQUIRED OF ALL TAXPAYERS (RULE 105).

Section 63-3022, Idaho Code. The following items must be added by all taxpayers in computing Idaho taxable income. (2-27-12)

01. State and Local Income Taxes. As provided in Section 63-3022(a), Idaho Code, state and local income taxes that are measured by net income and were deducted in computing taxable income must be added. This includes taxes paid to states other than Idaho and their political subdivisions, and amounts paid by an S corporation on capital gains, built-in gains, and excess net passive income. (2-27-12)()

02. Net Operating Loss Deduction. As provided in Section 63-3022(b), Idaho Code, the amount of the net operating loss deduction included in taxable income must be added. (2-27-12)

03. Capital Loss or Passive Loss Carryover Deduction. As provided in Section 63-3022(i), Idaho Code: (3-30-01)()

a. A corporation must add a capital loss or passive loss that was deducted in computing taxable income if the loss occurred during a taxable year when the corporation did not transact business in Idaho. However, unless a capital loss is not required to be added back where the corporation was part of a unitary group with and at least one (1) member of the group was taxable by Idaho for ~~that~~ the taxable year in which the loss was incurred. (4-4-13)()

b. An individual must add a capital loss or passive loss that was deducted in computing taxable income if the loss was incurred in an activity not taxable by Idaho at the time it was incurred. (4-4-13)

04. Interest and Dividend Income Exempt From Federal Taxation. As provided in Section 63-3022M, Idaho Code, certain interest and dividend income that is exempt from federal income tax must be added. For example, interest income from state and local bonds that is exempt from federal income tax pursuant to Section 103, Internal Revenue Code, must be added. (2-27-12)

a. Interest from bonds issued by the state of Idaho or its political subdivisions is exempt from Idaho income tax and, therefore, is not required to be added to taxable income. (3-20-97)

b. If a taxpayer has both Idaho and non-Idaho state and municipal interest income, expenses not allowed pursuant to Sections 265 and 291, Internal Revenue Code, must be prorated between the Idaho and non-Idaho interest income as provided in Subsections 105.04.b.i. and 105.04.b.ii. The addition to taxable income required for non-Idaho state and municipal interest income must be offset by the expenses prorated to that interest income. The allowable offset may not exceed the reportable amount of interest income. An unused offset may not be carried back or carried over. A schedule showing the interest and related offsets must be attached to the return. (2-27-12)

i. Expenses prorated to Idaho state and municipal interest income are based on the ratio of Idaho state and municipal interest income to total state and municipal interest income. (2-27-12)

ii. Expenses prorated to non-Idaho state and municipal interest income are based on the ratio of non-Idaho state and municipal interest income to total state and municipal interest income. (2-27-12)

05. Interest Expense Attributable to Tax-Exempt Interest Income. As provided by Section 63-3022M, Idaho Code, a taxpayer must add interest expense on indebtedness incurred to purchase or carry certain obligations that produce tax-exempt interest income. Because this addition serves to offset the tax-exempt interest income, it is often referred to as an interest expense offset related to tax-exempt interest income. See Rule 115 of these rules for the computation of the interest expense offset related to tax-exempt interest. (2-27-12)

06. Special First-Year Depreciation Allowance. As provided by Section 63-3022O, Idaho Code, if a taxpayer claims the special first-year depreciation allowance on property acquired before 2008 or after 2009 pursuant to Section 168(k), Internal Revenue Code, the adjusted basis of that property and the depreciation deduction allowed for Idaho income tax purposes must be computed without regard to the special first-year depreciation allowance. The amount of depreciation computed for federal income tax purposes that exceeds the amount of depreciation computed for Idaho income tax purposes must be added. The adjustments required by this subsection do not apply to property acquired after 2007 or before 2010. (2-27-12)

(BREAK IN CONTINUITY OF SECTIONS)

120. ADJUSTMENTS TO TAXABLE INCOME -- SUBTRACTIONS AVAILABLE TO ALL TAXPAYERS (RULE 120).

Section 63-3022, Idaho Code. The following items are allowable subtractions to all taxpayers in computing Idaho taxable income. (2-27-12)

01. State and Local Income Tax Refunds. State and local income tax refunds included in taxable income may be subtracted, unless the refunds have already been subtracted pursuant to Section 63-3022(a), Idaho Code. (2-27-12)

02. Idaho Net Operating Loss. As provided in Section 63-3022(c), Idaho Code, an Idaho net operating loss deduction described in Section 63-3021, Idaho Code, and allowed by Section 63-3022(c), Idaho Code, and Rules 200 through 210 of these rules may be subtracted. An S corporation or a partnership that incurs a loss is not entitled to claim a net operating loss deduction. The loss is passed through to the shareholders and partners who may deduct the loss. (2-27-12)

03. Income Not Taxable by Idaho. As provided in Section 63-3022(f), Idaho Code, income that is exempt from Idaho income taxation by a law of the state of Idaho or of the United States may be subtracted if that income is included in taxable income and has not been previously subtracted. Income exempt from taxation by Idaho includes the following: (2-27-12)

a. Interest income from obligations issued by the United States Government. Gain recognized from the sale of United States Government obligations is not exempt from Idaho tax and, therefore, may not be subtracted from taxable income. For the interest expense offset, see Rule 115 of these rules. (7-1-99)

b. Idaho lottery prizes exempt by Section 67-7439, Idaho Code. For prizes awarded on lottery tickets purchased in Idaho after January 1, 1998, a subtraction is allowed for each lottery prize that is less than six hundred dollars (\$600). If a prize equals or exceeds six hundred dollars (\$600), no subtraction is allowed. The full amount of the prize is included in income. (4-5-00)

c. Certain income from loss recoveries. See Rule 195 of these rules. ()

04. Technological Equipment Donation. As provided by Section 63-3022J, Idaho Code, and Rule 180 of these rules, the lower of cost or fair market value of technological equipment donated to qualifying institutions may be subtracted, limited to the Idaho taxable income of the taxpayer. (2-27-12)()

05. Long-Term Care Insurance. As provided in Section 63-3022Q, Idaho Code, a deduction from taxable income is allowed for the amount of the premiums paid during the taxable year for qualifying long-term care insurance for the benefit of the taxpayer, a dependent of the taxpayer or an employee of the taxpayer to the extent the premiums have not otherwise been deducted or accounted for by the taxpayer for Idaho income tax purposes. See Rule 193 of these rules. (2-27-12)

06. Special First-Year Depreciation Allowance. As provided by Section 63-3022O, Idaho Code, if a taxpayer claims the special first-year depreciation allowance on property acquired before 2008 or after 2009 pursuant to Section 168(k), Internal Revenue Code, the adjusted basis of that property and the depreciation deduction allowed for Idaho income tax purposes must be computed without regard to the special first-year depreciation allowance. The adjustments required by this subsection do not apply to property acquired after 2007 or before 2010. (2-27-12)

a. Depreciation. The amount of depreciation computed for Idaho income tax purposes that exceeds the amount of depreciation computed for federal income tax purposes may be subtracted. (2-27-12)

b. Gains and losses. During the recovery period, the adjusted basis of depreciable property computed for federal income tax purposes will be less than the adjusted basis for Idaho income tax purposes as a result of claiming the special first-year depreciation allowance. If a loss qualifies as a capital loss for federal income tax purposes, the federal capital loss limitations and carryback and carryover provisions apply in computing the Idaho capital loss allowed. (2-27-12)

i. If a sale or exchange of property results in a gain for both federal and Idaho income tax purposes, a subtraction is allowed for the difference between the federal and Idaho gains computed prior to any applicable Idaho capital gains deduction. (2-27-12)

ii. If a sale or exchange of property results in a gain for federal income tax purposes and an ordinary loss for Idaho income tax purposes, the federal gain and the Idaho loss must be added together and the total may be subtracted. For example, if a taxpayer has a federal gain of five thousand dollars (\$5,000) and an Idaho loss of four thousand dollars (\$4,000), the amount subtracted would be nine thousand dollars (\$9,000). (2-27-12)

iii. If a sale or exchange of property results in an ordinary loss for both federal and Idaho income tax purposes, the difference between the federal and Idaho losses may be subtracted. For example, if a taxpayer has a federal loss of three hundred dollars (\$300) and an Idaho loss of five hundred dollars (\$500), the amount subtracted would be two hundred dollars (\$200). (2-27-12)

iv. If a sale or exchange of property results in a capital loss for both federal and Idaho income tax purposes, apply the capital loss limitations and subtract the difference between the federal and Idaho deductible capital losses. For example, if a taxpayer has a federal capital loss of six thousand dollars (\$6,000) and an Idaho capital loss of eight thousand dollars (\$8,000), both the federal and Idaho capital losses are limited to a deductible capital loss of three thousand dollars (\$3,000). In this case, no subtraction is required for the year of the sale. In the next year, assume the taxpayer had a capital gain for both federal and Idaho purposes of two thousand dollars (\$2,000). The capital loss carryovers added to the capital gain results in a federal deductible capital loss of one thousand dollars (\$1,000) and an Idaho deductible capital loss of three thousand dollars (\$3,000). The taxpayer would subtract the difference between the federal and Idaho deductible losses or two thousand dollars (\$2,000) in computing Idaho taxable income. (3-20-04)

07. Income Restored Under Federal Claim of Right. As provided by Section 63-3022F, Idaho Code, if a taxpayer included an item in Idaho taxable income in a prior taxable year and was later required to restore the item because it was established after the close of the prior taxable year that the taxpayer did not have an unrestricted right to such item or to a portion of the item, such taxpayer is allowed a deduction in determining Idaho taxable income if the taxpayer has not otherwise deducted such item in computing his taxable income. The deduction is allowed to the extent such deduction would have been allowed to the taxpayer under Section 1341, Internal Revenue Code, had the taxpayer claimed the deduction instead of the recalculation of federal tax, but only to the extent the item was included in Idaho taxable income in the prior taxable year. (2-27-12)

121. ADJUSTMENTS TO TAXABLE INCOME -- SUBTRACTIONS AVAILABLE ONLY TO INDIVIDUALS (RULE 121).

Section 63-3022, Idaho Code. (3-20-97)

01. Income Not Taxable by Idaho. As provided in Section 63-3022(f), Idaho Code, subtract the amount of income that is exempt from Idaho income tax if included in taxable income. Income exempt from taxation by Idaho includes the following: (7-1-99)

a. Certain income earned by American Indians. See Rule 033 of these rules. (5-3-03)

b. Retirement payments received pursuant to the old Teachers' Retirement System. Prior to its repeal on July 1, 1967, the old Teachers' Retirement System was codified at Title 33, Chapter 13, Idaho Code. Teachers who were employed by the state of Idaho and who retired on or after January 1, 1966, generally do not qualify for this exemption. Teachers who were not state employees and who retired on or after January 1, 1968, do not qualify. Teachers receiving benefits pursuant to the Public Employees' Retirement System, Title 59, Chapter 13, Idaho Code, do not qualify for the exemption. No exemption is provided for amounts received from other states, school districts outside Idaho, or any other source if the proceeds do not relate to teaching performed in Idaho. (3-20-97)

02. Military Compensation for Service Performed Outside Idaho. As provided in Section 63-3022(h), Idaho Code, certain members of the United States Armed Forces may deduct from taxable income their military service pay received for military service performed outside Idaho. See Rule 032 of these rules. (3-30-01)

03. Standard or Itemized Deduction. As provided in Section 63-3022(j), Idaho Code, deduct either the standard deduction amount as defined in Section 63, Internal Revenue Code, or the itemized deductions allowed by the Internal Revenue Code. If itemized deductions are limited pursuant to the Internal Revenue Code, they are also limited for Idaho income tax purposes. (3-30-01)

a. If state and local income or general sales taxes are included in itemized deductions for federal purposes pursuant to Section 164, Internal Revenue Code, they ~~shall~~ **will** be added to taxable income. If itemized deductions are limited pursuant to Section 68, Internal Revenue Code, the amount of state and local income or general sales taxes added back ~~shall~~ **will** be computed by dividing the amount of itemized deductions that are allowed to the taxpayer after all federal limitations by total itemized deductions before the Section 68 limitation. For taxable years

beginning in or after 2007, this proration *shall will* be calculated four (4) digits to the right of the decimal point. If the fifth digit is five (5) or greater, the fourth digit is rounded to the next higher number ($\$10,000/\$15,000 = .66666 = .6667 = 66.67\%$). If the fifth digit is less than five (5), the fourth digit remains unchanged and any digits remaining to its right are dropped ($\$10,000/\$30,000 = .33333 = .3333 = 33.33\%$). The percentage may not exceed one hundred percent (100%) nor be less than zero (0). The result is then applied to state and local income or general sales taxes to determine the Idaho state and local income and general sales tax addback. See Rule 105 of these rules. ~~(4-2-08)~~()

b. If an itemized deduction allowable for federal income tax purposes is reduced for the mortgage interest credit or the foreign tax credit, the amount that would have been allowed if the federal credit had not been claimed is allowed as an itemized deduction. (7-1-99)

c. For taxable years beginning on or after January 1, 2000, the standard deduction allowed on a married filing joint return *shall will* be equal to two (2) times the basic standard deduction for a single individual. Add to this amount any additional standard deduction for the aged or blind allowed for federal income tax purposes. ~~(3-30-01)~~()

04. Social Security and Railroad Retirement Benefits. As provided in Section 63-3022(1), Idaho Code, subtract from taxable income the amount of social security and certain railroad retirement benefits included in gross income pursuant to Section 86, Internal Revenue Code. (3-30-01)

a. The term social security benefits includes United States social security benefits and Canadian social security pensions received by a United States resident that are treated as United States social security benefits for United States income tax purposes. (7-1-99)

b. The term certain railroad retirement benefits means the following amounts paid by the Railroad Retirement Board: (4-6-05)

i. Annuities, supplemental annuities, and disability annuities, including the Tier I social security equivalent benefits, and the Tier II pension amounts; (4-6-05)

ii. Railroad unemployment; and (4-6-05)

iii. Sickness benefits. (4-6-05)

05. Self-Employed Worker's Compensation Insurance Premiums. As provided in Section 63-3022(m), Idaho Code, self-employed individuals may subtract from taxable income the premiums paid to secure worker's compensation insurance for coverage in Idaho if the premiums have not been previously deducted in computing taxable income. The term worker's compensation insurance means "workmen's compensation" as defined in Section 41-506(d), Idaho Code. Premiums paid to secure worker's compensation insurance coverage are those payments made in compliance with Section 72-301, Idaho Code. (3-30-01)

06. Retirement Benefits. As provided in Section 63-3022A, Idaho Code, and Rule 130 of these rules, a deduction from taxable income is allowed for certain retirement benefits.

(3-20-97)

07. Energy Efficiency Upgrades. As provided in Section 63-3022B, Idaho Code, and Rule 140 of these rules, a deduction from taxable income is allowed for qualified expenses related to the installation of energy efficiency upgrades in the residence of the taxpayer built or subject to an outstanding building permit on or before 2002. (4-4-13)

08. Alternative Energy Devices. As provided in Section 63-3022C, Idaho Code, and Rule 150 of these rules, a deduction from taxable income is allowed for qualified expenses related to the acquisition of an alternative energy device used in an Idaho residence of the taxpayer. (4-4-13)

09. Household and Dependent Care Services. As provided in Section 63-3022D, Idaho Code, and Rule 160 of these rules, a deduction from taxable income is allowed for certain employment related expenses incurred for the care of qualifying individuals. (3-20-97)

10. Household Deduction for Elderly or Developmentally Disabled Dependents. As provided in Section 63-3022E, Idaho Code, and Rule 165 of these rules, a deduction from taxable income is allowed for maintaining a household where an elderly or developmentally disabled family member resides. (3-20-97)

11. Reparations to Displaced Japanese Americans. As provided in Section 63-3022G, Idaho Code, certain individuals are allowed a deduction for amounts included in taxable income relating to reparation payments from the United States Civil Liberties Public Education Fund. (3-20-97)

12. Capital Gains. As provided in Section 63-3022H, Idaho Code, and Rules 170 through 173 of these rules, a deduction from taxable income may be allowed for net capital gains recognized from the sale of qualified Idaho property. (2-27-12)

13. Adoption Expenses. As provided in Section 63-3022I, Idaho Code, and Rule 185 of these rules, a deduction from taxable income is allowed for certain expenses incurred when adopting a child. (3-20-97)

14. Idaho Medical Savings Account. As provided in Section 63-3022K, Idaho Code, and Rule 190 of these rules, a deduction from taxable income is allowed for qualifying contributions to and interest earned on an Idaho medical savings account. (4-5-00)

15. Idaho College Savings Program. As provided in Section 63-3022(n), Idaho Code, a deduction from taxable income is allowed for qualifying contributions to a college savings program. (3-15-02)

16. Health Insurance Costs. A deduction from taxable income is allowed for the amounts paid by the taxpayer during the taxable year for insurance that constitutes medical care, as defined in Section 63-3022P, Idaho Code, for the taxpayer, the spouse or dependents of the taxpayer not otherwise deducted or accounted for by the taxpayer for Idaho income tax purposes. See Rule 193 of these rules. (5-3-03)

17. Unused Net Operating Losses of Estates and Trusts. An unused net operating loss carryover remaining on termination of an estate or trust is allowed to the beneficiaries succeeding to the property of the estate or trust. The carryover amount is the same in the hands of the beneficiaries as in the hands of the estate or trust. For taxable years beginning on and after January 1, 2000, but prior to January 1, 2013, the first one hundred thousand dollars (\$100,000) of loss sustained in any taxable year of an estate or trust must first be carried back by the estate or trust unless an election has been made as provided by Section 63-3022(c), Idaho Code, to forego the carryback. The first taxable year of the beneficiaries to which the net operating loss is to be carried is the taxable year of the beneficiary in which the estate or trust terminates. No part of a net operating loss incurred by an estate or trust can be carried back by a beneficiary, even if the estate or trust had no preceding taxable years eligible for a carryback. For purposes of determining the number of years to which a loss may be carried over by a beneficiary, the last taxable year of the estate or trust and the first taxable year of the beneficiary to which a loss is carried over each constitute a taxable year. For taxable years beginning on and after January 1, 2013, the first one hundred thousand (\$100,000) of loss sustained in any taxable year of an estate or trust may be carried back by the estate or trust 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. (2-27-12)()

(BREAK IN CONTINUITY OF SECTIONS)

125. ADJUSTMENTS TO TAXABLE INCOME -- BONUS DEPRECIATION ON PROPERTY ACQUIRED AFTER SEPTEMBER 10, 2001, AND BEFORE DECEMBER 31, 2007, OR AFTER DECEMBER 31, 2009 (RULE 125).

Section 63-3022O, Idaho Code.

(4-2-08)

01. In General. Section 63-3022O, Idaho Code, requires that when computing Idaho taxable income, the amount of the adjusted basis of depreciable property, depreciation, and gains and losses from the sale, exchange, or other disposition of depreciable property acquired after September 10, 2001, and before December 31, 2007, or acquired after December 31, 2009, must be computed without regard to bonus depreciation allowed by Section 168(k), Internal Revenue Code. In order to meet this requirement, a taxpayer must be consistent in making the Idaho adjustments required for all the taxable years in which federal bonus depreciation is claimed. See Subsection 125.02 of this rule. The adjustments required by this rule do not apply to property acquired after 2007 ~~or~~ and before 2010. (2-27-12)()

02. Depreciation.

(4-2-08)

a. If a taxpayer makes the Idaho addition in the first taxable year bonus depreciation was claimed for federal income tax purposes, in the subsequent taxable years the taxpayer is entitled to the Idaho subtractions for the additional depreciation computed for Idaho income tax purposes that exceeds the amount of depreciation claimed for federal income tax purposes.

(2-27-12)

b. If a taxpayer fails to make the Idaho addition in the first taxable year bonus

depreciation was claimed for federal income tax purposes, the taxpayer is not entitled to claim the Idaho subtractions for additional depreciation in subsequent taxable years. In such instances, claiming an Idaho subtraction for additional depreciation when the first year Idaho addition was not claimed constitutes computing depreciation with regard to Section 168(k), Internal Revenue Code, which is specifically prohibited in Section 63-3022O(1), Idaho Code. For example, the Idaho addition is required for a taxable year when the bonus depreciation is claimed even though the taxpayer may be limited in claiming a passive loss from a pass-through entity in which the bonus depreciation arose. If the bonus depreciation is not added back in that taxable year, the Idaho subtractions are not allowed in the subsequent taxable years. (2-27-12)

c. The Idaho adjustments are required in all taxable years in which the taxpayer has an Idaho filing requirement or is a member of a combined group of corporations in which at least one member has an Idaho filing requirement. If the taxpayer is not required to file an Idaho income tax return for one (1) or more years in which depreciation may be claimed, the taxpayer may claim the Idaho adjustment in the taxable years in which an Idaho return is filed if all such taxable years are treated consistently. (2-27-12)

d. Example. A corporation transacted business in California and Oregon during taxable year 2003. In 2004, the taxpayer began transacting business in Idaho and was required to file an Idaho corporation income tax return for that year. On the federal return filed for 2003, the taxpayer claimed bonus depreciation for assets placed in service that year. Because the taxpayer was not required to file an Idaho corporation income tax return for 2003, there was no Idaho bonus depreciation addition required of the taxpayer. In 2004, the second year of depreciation for the assets placed in service in 2003, the taxpayer was required for Idaho income tax purposes to compute depreciation on the assets as if bonus depreciation had not been claimed. The difference in the amount of Idaho depreciation and the depreciation claimed for federal income tax purposes for 2004 would be allowed to the taxpayer as an Idaho subtraction since the taxpayer was required to file an Idaho corporation income tax return for that year. Assuming the taxpayer files an Idaho corporation income tax return for the remaining years when depreciation on the assets is allowed, the taxpayer will be allowed the Idaho subtraction in those years for the difference in the Idaho and federal depreciation amounts. If the corporation transacted business in Idaho during 2003 only, the return filed for that year should reflect the Idaho addition for the difference in the amount of Idaho depreciation and the depreciation claimed for federal income tax purposes, even though the subtractions will not apply in subsequent years. (4-2-08)

(BREAK IN CONTINUITY OF SECTIONS)

140. DEDUCTION FOR ENERGY EFFICIENCY UPGRADES (RULE 140).
Section 63-3022B, Idaho Code. (3-20-97)

01. Qualifying Date. The energy efficiency upgrade must be installed in a residence of the taxpayer, or addition to a residence, that existed on or before January 1, 2002. A residence, or addition to a residence, constructed after January 1, 2002, does not qualify. (4-4-13)

