

IN THE HOUSE OF REPRESENTATIVES

HOUSE BILL NO. 14

BY REVENUE AND TAXATION COMMITTEE

AN ACT

1 RELATING TO INCOME TAXES; AMENDING SECTION 63-3021, IDAHO CODE, TO REVISE A  
2 PROVISION REGARDING THE CALCULATION OF A NET OPERATING LOSS IN THE CASE  
3 OF A QUALIFIED BUSINESS INCOME DEDUCTION; AMENDING SECTION 63-3022,  
4 IDAHO CODE, TO ESTABLISH A PROVISION REGARDING THE CALCULATION OF IDAHO  
5 TAXABLE INCOME IN THE CASE OF A NET OPERATING LOSS CARRYFORWARD; AND  
6 DECLARING AN EMERGENCY AND PROVIDING RETROACTIVE APPLICATION.  
7

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

9 SECTION 1. That Section 63-3021, Idaho Code, be, and the same is hereby  
10 amended to read as follows:

11 63-3021. NET OPERATING LOSS. (a) The term "net operating loss" means  
12 the amount by which Idaho taxable income, after making the modifications  
13 specified in subsection (b) of this section, is less than zero (0).

14 (b) Add the following amounts:

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

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

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

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

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

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

30 (5) ~~Any amount limited by section 461 deduction allowed under section~~  
31 ~~199A of the Internal Revenue Code (relating to the deduction for quali-~~  
32 ~~fied business income).~~

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

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

39 (2) If the premerger corporation conducted operations in Idaho and at  
40 least one (1) other state, the section 382, Internal Revenue Code, loss  
41 limitation is limited further by the premerger loss corporation's Idaho

1           apportionment factor for the last taxable year preceding the date of the  
2           merger.

3           SECTION 2. That Section 63-3022, Idaho Code, be, and the same is hereby  
4           amended to read as follows:

5           63-3022. ADJUSTMENTS TO TAXABLE INCOME. The additions and subtrac-  
6           tions set forth in this section, and in sections 63-3022A through 63-3022U,  
7           Idaho Code, are to be applied to the extent allowed in computing Idaho tax-  
8           able income:

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

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

16          (c) (1) A net operating loss for any taxable year commencing on and af-  
17          ter January 1, 2000, but before January 1, 2013, shall be a net oper-  
18          ating loss carryback not to exceed a total of one hundred thousand dol-  
19          lars (\$100,000) to the two (2) immediately preceding taxable years. At  
20          the election of the taxpayer, the two (2) year carryback may be forgone  
21          and the loss subtracted from income received in taxable years arising in  
22          the next twenty (20) years succeeding the taxable year in which the loss  
23          arises in order until exhausted.

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

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

38          (4) Net operating losses incurred by a corporation during a year in  
39          which such corporation did not transact business in Idaho or was not  
40          included in a group of corporations combined under subsection (t) of  
41          section 63-3027, Idaho Code, may not be subtracted. However, if at  
42          least one (1) corporation within a group of corporations combined under  
43          subsection (t) of section 63-3027, Idaho Code, was transacting business  
44          in Idaho during the taxable year in which the loss was incurred, then the  
45          net operating loss may be subtracted. Net operating losses incurred by  
46          a person, other than a corporation, in activities not taxable by Idaho  
47          may not be subtracted.

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

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

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

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

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

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

18 (2) Net operating losses attributable to a beneficiary of a trust or es-  
19 tate under section 642 of the Internal Revenue Code shall be a deduction  
20 for the beneficiary to the extent that income from the trust or estate  
21 would be attributable to this state under the provisions of this chap-  
22 ter.

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

30 (i) In the case of a corporation, including any corporation included  
31 in a group of corporations combined under subsection (t) of section 63-3027,  
32 Idaho Code, add any capital loss or passive loss deducted which loss was in-  
33 curred during any year in which such corporation did not transact business in  
34 Idaho. However, do not add any capital loss deducted if a corporation, in-  
35 cluding any corporation in a group of corporations combined under subsection  
36 (t) of section 63-3027, Idaho Code, was transacting business in Idaho dur-  
37 ing the taxable year in which the loss was incurred. In the case of persons  
38 other than corporations, add any capital loss or passive loss deducted which  
39 was incurred in activities not taxable by Idaho at the time such loss was in-  
40 curred. In computing the income taxable to an S corporation or partnership  
41 under this section, deduction shall not be allowed for a carryover or carry-  
42 back of a net operating loss provided for in subsection (c) of this section,  
43 a passive loss or a capital loss provided for in section 1212 of the Internal  
44 Revenue Code.

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

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

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

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

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

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

15 (n) In the case of an individual for any tax period ending on or prior  
16 to December 31, 2016, deduct the amount contributed to a college savings pro-  
17 gram but not more than four thousand dollars (\$4,000) per tax year. In the  
18 case of an individual and for any tax period starting on or after January 1,  
19 2017, deduct the amount contributed to a college savings program, but not  
20 more than six thousand dollars (\$6,000) per tax year. For those married and  
21 filing jointly, deduct the amount contributed to a college savings program,  
22 but not more than twice of that allowed for an individual. To be qualified  
23 for this deduction, the contribution must be made during the taxable year and  
24 made to an Idaho college savings program account as described in chapter 54,  
25 title 33, Idaho Code.

26 (o) In the case of an individual, add the amount of a nonqualified with-  
27 drawal from an individual trust account or savings account established pur-  
28 suant to chapter 54, title 33, Idaho Code, less any amount of such nonqual-  
29 ified withdrawal included in the individual's federal gross income pursuant  
30 to section 529 of the Internal Revenue Code. The addition provided in this  
31 subsection is limited to contributions previously exempt from Idaho state  
32 income tax and earnings generated from the program as long as the earnings  
33 are not already included in federal adjusted gross income.

34 (p) In the case of an individual, add the amount of a withdrawal from  
35 an individual trust account or savings account established pursuant to chap-  
36 ter 54, title 33, Idaho Code, transferred to a qualified tuition program, as  
37 defined in section 529 of the Internal Revenue Code, that is operated by a  
38 state other than Idaho or to a qualified ABLE program as defined in section  
39 529A of the Internal Revenue Code. The addition provided in this subsection  
40 is limited to the amount of the contributions to the Idaho individual trust  
41 account or savings account by the account owner that was deducted on the ac-  
42 count owner's Idaho income tax return for the year of the transfer and the  
43 prior taxable year.

44 (q) Deduct any amount disallowed under section 461(1)(1)(B) of the In-  
45 ternal Revenue Code (relating to excess business losses) that is treated as  
46 part of the taxpayer's net operating loss carryforward for federal income  
47 tax purposes.

48 SECTION 3. An emergency existing therefor, which emergency is hereby  
49 declared to exist, this act shall be in full force and effect on and after its  
50 passage and approval, and retroactively to January 1, 2019.