

Idaho States Tax Commission
INCOME TAX RULES COMMITTEE
Meeting Minutes
January 23, 2013
1:30 pm – 3:00 pm, 1CR5

ATTENDEES: Cynthia Adrian, Greg Busmann, Terry Harvey, La Var Jolley (via phone), April Kooch, Lisa Schroeder, Phil Skinner, Aaron Stevens, Steve Wynn, Sherry Cann, Tawnya Nyman (via phone), Matthew Grow (via phone), Rick Smith, LeAnn Sannes

NEW BUSINESS:

- Rule 002 Rule 002 addresses written interpretations. It was questioned whether this rule is still needed or not. This issue will be researched for the next meeting.
- Rule 34 & 35 Rule 34 Estate-Residency Status / Rule 35 Trusts-Residency Status. It was questioned what constitutes a resident or a non-resident trust. There seems to be a conflict between the statute and rules in the definition. It was recommended to consider elimination of Administrative Rules 34 and 35, and modification of Administrative Rule 100. Phil is to determine if this change is statutory or could be accomplished through rule.
- Rule 40 Rule 40 defines a place of abode. The problem is that our definition of “place of abode” could be argued to allow a taxpayer to qualify for a foreign income exclusion under Idaho law, even though they would not qualify under federal law. It was suggested to possibly modify Administrative Rule 40.03 to clarify that this definition does not apply for purposes of the foreign income exclusion.
- Rule 125.01 Rule 125.01 addresses adjustments to taxable income – bonus depreciation on property acquired after September 10, 2001, and before December 21, 2007, or after December 31, 2009. It was suggested the word ‘or’ in the last sentence of subsection 01 be changed to ‘and’. A draft will be prepared for the February meeting.
- Rule 173.01 Rule 173.01 deals with Idaho capital gains deduction – pass-through entities. La Var suggested that we add a subsection to clarify how gain from tiered entities is treated. The issue will be researched and discussed further at the next meeting.

- Rule 252 Rule 252 is concerned with nonresident and part-year resident individuals, and adjustments allowed in computing their Idaho adjusted gross income and dealing with NOL carry-over. It was suggested this rule needs to be amended to eliminate the distortive percentage in the current formula. A draft will be prepared for the February meeting.
- New Rule La Var asked for come clarification on sourcing of suspended losses on non-residents. La Var will provide a draft for the February meeting.
- Rule 600 Rule 600 addresses entities included in a combined report. This is in regards to real estate mortgage investment conduits and how REMIC excess inclusion income is handled. Phil will determine if this is a rule change or a statute change before the February meeting.
- Rule 710 Rule 710 contains Idaho investment tax credit. It was recommended that Rule 710 be amended consistent with 2011 House Bill 296, which added “Idaho” to the code. It was asked if this was just a technical correction since it was something that just got missed. If not, a draft will be created for the next meeting to correct it.
- Rule 805 Rule 805 addresses joint returns. The rule is not consistent with the statute that states that husbands and wives must file a joint return for state purposes if they elect to file a joint return for federal purposes. The question of who may file a joint return arises around same-sex marriages. One states ‘*married taxpayers*’ and the other states ‘*husband and wife*’. It needs to be clarified to match the statute. A draft will be ready for the next meeting.
- Rule 855.06 Rule 855.06 addresses the permanent building fund. This rule still says ‘*entities that pay the tax for individuals making the election*’ which is no longer a valid option at this point, and needs to be changed. It was questioned whether the PFB applies when the PTE is paying backup withholding for an individual. This also needs to be clarified. A draft will be ready for the next meeting.
- Rule 890 Rule 890 regards the notice of adjustment of federal tax liability. It was recommended to define the term ‘final federal determination’ as the Internal Revenue Code does. It was decided to look at how other states are handling this.

John McGown called in prior to the meeting to submit his concerns regarding Rule 890, and suggested that any changes to rules be made prospectively rather than retroactively.

ADJOURNMENT: There being no further business, the meeting was adjourned.

Cynthia Adrian
Chairman

Sherry Cann
Rules Coordinator