

**INCOME TAX RULES COMMITTEE MEETING
AGENDA
WEDNESDAY, JULY 8, 2015 -1:30 PM
IDAHO STATE TAX COMMISSION
ROOM 1CR5**

INCOME TAX RULES

Rule 016—Idaho Gross Income

Rule 171—Idaho Capital Gains Deduction—Qualified Property

Rule 291—Tax Paid by Pass-Through Entities For Owners or Beneficiaries—Computation of Idaho Taxable Income for Taxable Years Beginning On or After January 1, 2014

Next meeting date:

For more information, please contact the Committee Chair, or the Rules Coordinator at sherry.briscoe@tax.idaho.gov or call 208.334.7544. All agendas and rules related documents are posted on our website under the appropriate committee.

016. IDAHO GROSS INCOME.

Sections 63-3011 and 63-3030, Idaho Code

01. **In General.** Gross income means all income from whatever source derived, unless specifically excluded by the Internal Revenue Code.
02. **Gross Income from Pass-Through Entities.** Gross income includes an owner's share of a pass-through entity's gross income pursuant to sections 702(c) and 1366(c) of the Internal Revenue Code, and federal Treasury Regulation Section 1.61-13 (citing Part I, Subchapter J, Chapter 1 of the Internal Revenue Code).
03. **Gross Income from Idaho Sources.** Gross income from Idaho sources is that portion of total gross income derived from or related to sources within Idaho. Income derived from or related to sources within Idaho is determined pursuant to this rule and Rules 260 through 286 of these rules.
04. **Idaho Source Gross Income from a Pass-Through Entity.**
 - a. Partnership. The amount of a partner's gross income from Idaho sources is:
 - i. The partner's distributive share of partnership gross income included in the partnership's apportionable income multiplied by the Idaho apportionment factor of the partnership, and
 - ii. The partner's distributive share of gross income allocated to Idaho.
 - b. S Corporation. The amount of a shareholder's gross income from Idaho sources is:
 - i. The shareholder's pro rata share of the S corporation gross income included in the S corporation's apportionable income multiplied by the Idaho apportionment factor of the S corporation, and
 - ii. The shareholder's pro rata share of gross income allocated to Idaho.
 - c. Trust or Estate. The Idaho source portion of the income that constitutes gross income pursuant to federal Treasury Regulation Section 1.61-13 and Part I, Subchapter J, Chapter 1 of the Internal Revenue Code, is the amount of such income that would be Idaho source if received directly by the individual.
05. **Examples.**
 - a. A taxpayer's federal adjusted gross income includes ten thousand dollars (\$10,000) of ordinary loss passed through from a partnership that transacts business only in Idaho. However, the taxpayer's distributive share of the partnership's gross income determined under Section 61 of the Internal Revenue Code is fifty thousand dollars (\$50,000). The taxpayer's gross income from Idaho sources from the partnership is fifty thousand dollars (\$50,000).

- b. A taxpayer's federal adjusted gross income includes ten thousand dollars (\$10,000) of ordinary loss passed through from a partnership that has a fifty percent (50%) Idaho apportionment factor. However, the taxpayer's distributive share of the partnership's gross income determined under Section 61 of the Internal Revenue Code is fifty thousand dollars (\$50,000). The taxpayer's gross income from Idaho sources from the partnership is twenty-five thousand dollars (\$25,000).
- c. A nonresident taxpayer's federal adjusted gross income includes five thousand dollars (\$5,000) of guaranteed payments for services performed outside of Idaho received from a partnership that has a fifty percent (50%) Idaho apportionment factor. As provided in Section 63-3026A(3)(a)(i)(2), Idaho Code, none of the guaranteed payments are included in the partner's gross income from Idaho sources because the services were performed outside of Idaho.
- d. A nonresident taxpayer's federal adjusted gross income includes five thousand dollars (\$5,000) of guaranteed payments for services performed in Idaho received from a partnership that has a fifty percent (50%) Idaho apportionment factor. As provided in Section 63-3026A(3)(a)(i)(2), Idaho Code, all of the guaranteed payments are included in the partner's gross income from Idaho sources because the services were performed in Idaho.
- e. A nonresident taxpayer's federal adjusted gross income includes three hundred thousand dollars (\$300,000) of guaranteed payments for services performed outside of Idaho received from a partnership that has a fifty percent (50%) Idaho apportionment factor. As provided in Section 63-3026A(3)(a)(i)(2), Idaho Code, the first two hundred and fifty thousand dollars (\$250,000) of guaranteed payments are sourced as compensation for services. Since the services were performed outside of Idaho, two hundred and fifty thousand dollars (\$250,000) of the guaranteed payments are not included in the partner's gross income from Idaho sources. However, twenty-five thousand dollars (\$25,000) of the guaranteed payments in excess of two hundred and fifty thousand dollars (\$250,000) are included in the partner's gross income from Idaho sources based on the apportionment factor of the partnership.
- f. A nonresident taxpayer's federal adjusted gross income includes ten thousand dollars (\$10,000) of nonbusiness gross income passed through from a partnership that has a fifty percent (50%) Idaho apportionment factor. If the partnership's nonbusiness income is allocated to Idaho, ten thousand dollars (\$10,000) of the nonbusiness gross income is included in the partner's gross income from Idaho sources. If the partnership's nonbusiness income is

allocated to a state other than Idaho, none of the nonbusiness gross income is included in the partner's gross income from Idaho sources.

171. IDAHO CAPITAL GAINS DEDUCTION -- QUALIFIED PROPERTY (RULE 171).
Section 63-3022H, Idaho Code.

01. Tangible Personal Property. Tangible personal property qualifies for the Idaho capital gains deduction if it was used in Idaho for at least twelve (12) months by a revenue-producing enterprise as defined by Section 63-3022H(4), Idaho Code, and Rule 172 of these rules. (4-7-11)

02. Real Property. Idaho real property qualifies for the Idaho capital gains deduction if it was held by the taxpayer for twelve (12) months. ~~Section 63-3022H(5), Idaho Code, defines real property to be land and other tangible property permanently upon or affixed to the land. For purposes of the Idaho capital gains deduction, real property does not include intangible property or severable property rights.~~ See Subsection 171.05 of this rule for examples of nonqualifying property. (4-4-13)

03. Gain from Forfeited Rights and Payments. Gain attributable to a cancellation, lapse, expiration, or other termination of a contract right or obligation does not qualify for the Idaho capital gains deduction. This includes any gain from the lapse of an option or from forfeited earnest money, down payment, or similar payments, related to otherwise qualifying property. (4-7-11)

04. Timber. As used in Section 63-3022H(3)(e), Idaho Code, qualified timber grown in Idaho includes: (3-20-97)

a. Standing timber held as investment property that is a capital asset pursuant to Section 1221, Internal Revenue Code; and (3-20-97)

b. Cut timber if the taxpayer elects to treat the cutting of timber as a sale or exchange pursuant to Section 631(a), Internal Revenue Code. (3-20-97)

05. Nonqualifying Property. Nonqualifying property includes: (4-4-13)

a. Real or tangible personal property not having an Idaho situs. (4-4-13)

b. Tangible personal property not used by a revenue-producing enterprise. (4-4-13)

c. Intangible property. Some examples of intangible property include, but are not limited to: (4-4-13)

i. Stocks and bonds; (4-4-13)

~~**ii.** Easements and rights of way, including agricultural, forest, historic, or open-space easements;~~ (4-4-13)

- ~~iii. Grazing permits;~~ (4-4-13)
- ~~iv. Leasehold interests, regardless of term;~~ (4-4-13)
- ~~v. Options;~~ (4-4-13)
- ~~vi. Water, mineral, hunting and fishing, renewable energy, and land surface rights;~~ (4-4-13)
- ~~vii. Conservation easements;~~ (4-4-13)
- ~~viii. Scenic easements;~~ (4-4-13)
- ~~ix.i.~~ Interests in a partnership, LLC or S corporation. (4-4-13)

06. Holding Periods. (3-20-97)

a. In General. To qualify for the capital gains deduction, property otherwise eligible for the Idaho capital gains deduction must be held for specific time periods. The holding periods for Idaho purposes generally follow Sections 1223 and 735, Internal Revenue Code. (5-8-09)

b. Exception to the Tacked-On Holding Period. The holding period of property given up in a tax-free exchange is not tacked on to the holding period of the property received if the property given up was nonqualifying property based on the requirements of Section 63-3022H(3), Idaho Code. (4-4-13)

c. Installment Sales. The determination of whether the property meets the required holding period is made using the laws applicable for the year of the sale. If the required holding period is not met in the year of sale, the gain is not from qualified property. The classification as nonqualified property will not change even though the gain may be reported in subsequent years when a reduced holding period is applicable. (4-5-00)

d. Examples of nonqualifying property. (7-1-98)

i. A taxpayer purchased land in California. After owning the land three (3) years, he gave up the California land in a tax-free exchange for land in Idaho. He owned the Idaho land for ten (10) months until selling it at a gain. For federal purposes the holding period of the California land tacks on to the holding period of the Idaho land. The gain from the sale of the California land would not qualify for the Idaho capital gains deduction since it is real property located outside Idaho. The holding period of the California land does not tack on to the holding period of the Idaho land for purposes of the Idaho capital gains deduction. Because the Idaho land was not held for twelve (12) months, the gain from the sale of the Idaho land does not qualify for the Idaho capital gains deduction. (3-30-07)

ii. Assume the same facts as in the example in Subparagraph 171.05.d.i. except the taxpayer's original purchase was land in Idaho. Because the taxpayer owned real property in Idaho that was exchanged for a second parcel of real property in Idaho, the holding period of the Idaho land given up tacks on to the holding period of the second parcel of Idaho land. Because the holding period of the second property, which includes the holding period of the first property, was at least twelve (12) months, the gain from the sale of the second parcel of real property qualifies for the Idaho capital gains deduction. (4-7-11)

07. Holding Periods of S Corporation and Partnership Property. (7-1-98)

a. Property Contributed by a Shareholder to an S Corporation or by a Partner to a Partnership. A shareholder or partner who contributes otherwise qualified property to an S corporation or partnership may treat the pass-through gain on the sale of that property as a qualifying Idaho capital gain if the property has, in total, been held by the shareholder or partner and the S corporation or partnership for the required holding period. The noncontributing shareholders or partners may treat the pass-through gain as a qualifying Idaho capital gain only if the S corporation or partnership held the property for the required holding period. (5-8-09)

b. Property Distributed by an S Corporation or Partnership. (2-27-12)

~~i. Liquidating Distributions. For purposes of this rule, the holding period of property received in a distribution from a partnership in liquidation of a partnership interest or from an S corporation in liquidation of stock does not include the time the partnership or S corporation held the property. In such cases, the property is received in exchange for the interest in the entity. Since a partnership interest and stock are not qualified property for purposes of the Idaho capital gains deduction, the entity's holding period does not tack on to the holding period of the property received in liquidation.~~ (2-27-12)

ii. **Nonliquidating** Distributions. For purposes of this rule, the holding period of property received in a distribution from a partnership ~~other than in liquidation of a partnership interest~~ or from an S corporation other than in liquidation of stock includes the time the entity held the property. (2-27-12)

291. TAX PAID BY PASS-THROUGH ENTITIES FOR OWNERS OR BENEFICIARIES -- COMPUTATION OF IDAHO TAXABLE INCOME FOR TAXABLE YEARS BEGINNING ON OR AFTER JANUARY 1, 2012~~4~~ (RULE 291).

Sections 63-3022L and 63-3026A, Idaho Code.

01. In General. A pass-through entity is responsible for reporting and paying the tax for nonresident individuals or withholding tax on the individual's share of income from the pass-through entity required to be included in Idaho taxable income as prescribed in Section 63-3036B, Idaho Code. For purposes of this rule, pass-through entity means "pass-through entity" as defined in Section 63-3006C, Idaho Code. (4-4-13)

02. Income Reportable to Idaho. The following items must be included in the computation of Idaho taxable income for an individual: (4-4-13)

a. Pass-through items that are income from Idaho sources of an owner as determined pursuant to Rule 263 of these rules. (4-7-11)

b. Distributable net income from an estate or trust that is income from Idaho sources as determined pursuant to Rule 261 of these rules. (4-7-11)

03. Deductions. Pass-through entities paying the tax under Section 63-3022L, Idaho Code, are not entitled to claim the following deductions on behalf of an individual.(4-7-11)

a. Capital Loss. As provided in Section 63-3022(i), Idaho Code, S corporations and partnerships are not allowed to carry over or carry back any capital loss provided for in Section 1212, Internal Revenue Code. (3-30-07)

b. Net Operating Loss. As provided in Section 63-3022(i), Idaho Code, S corporations and partnerships are not allowed to carry over or carry back any net operating loss provided for in Section 63-3022(c), Idaho Code. (3-30-07)

c. Idaho Capital Gains Deduction. As provided in Section 63-3022H, Idaho Code, the Idaho capital gains deduction may only be claimed by individual taxpayers on an individual income tax return. (4-7-11)

d. Informational Items. Amounts provided to owners of pass-through entities and beneficiaries of trusts and estates on the federal Schedule K-1 that are informational only may not be used as a deduction in computing the taxable income reportable under Section 63-3022L, Idaho Code. Informational items include the domestic production activities information and net earnings from self-employment. (4-7-11)

e. Items Not Deductible Under the Internal Revenue Code. A deduction is not allowed for items disallowed under the Internal Revenue Code. For example, a

deduction is not allowed for items disallowed as a deduction in Sections 162(c) and 262 through 280E, Internal Revenue Code, unless specifically allowed by Idaho law. Items allowed by Idaho law include expenses related to tax-exempt income under Section 265, Internal Revenue Code, which are allowed to be deducted as a result of Section 63-3022M, Idaho Code. (4-7-11)

f. Items Not Reported as a Pass-Through Deduction. Amounts not reported from the pass-through entity to the pass-through owner are not allowed as a deduction under Section 63-3022L, Idaho Code. These include: (4-7-11)

i. The standard deduction; (4-7-11)

ii. Personal exemptions; (4-7-11)

iii. Itemized deductions that result from activity of the pass-through owner. For example, a deduction is not allowed for charitable contributions made personally by the pass-through owner, but is allowed for the pass-through owner's share of charitable contributions made by the pass-through entity. (4-7-11)

g. Items Reported as a Pass-Through Deduction. Amounts reported from the pass-through entity to the pass-through owner in their distributive share, are allowed as a deduction under Section 63-3022L, Idaho Code. These include but are not limited to:

i. Section 179 deduction;

ii. Charitable contributions made by the pass-through entity;

iii. Investment interest expense;

iv. Section 59(e)(2) expenditures (Qualified research expenditures);

v. Amounts paid for medical insurance;

vi. Educational assistance benefits;

vii. Payments to a Pension or IRA. ()

04. Double Deductions Disallowed. A pass-through owner may not deduct amounts that previously have been deducted by a pass-through entity paying the tax on his behalf. If the pass-through owner files an Idaho individual income tax return reporting federal taxable income that includes amounts previously deducted by a pass-through entity on his behalf, the pass-through owner must add back the duplicated deduction

amounts in computing his Idaho taxable income on his individual income tax return. (4-7-11)