IDAHO State Tax Commission
PO Box 36 • Boise ID 83722-0410
800 Park Blvd., Plaza IV • Boise ID 83712-7742

INCOME TAX RULES COMMITTEE MEETING
AGENDA

The Committee convenes on Wednesday August 20, 2014 at 1:30 pm:

Idaho State Tax Commission
Room 1CR5 / Plaza IV / 800 Park Ave / Boise, Idaho

Welcome & Introductions *Committee Chair Cynthia Adrian*

RULES FOR DISCUSSION

Rule 016 (New Rule)—Idaho Gross Income—Draft attached

Rule 268 (New Rule)—Idaho Source Income of Nonresident and Part-Year Resident Individuals—Suspended Losses from Pass-Through Entities—Draft attached

Rule 275.04—Idaho Source Income of Nonresident and Part-Year Resident Individuals—Investment Income From Qualified Investment Partnerships—Draft attached

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, 2012

Next meeting date:

Meeting adjourned

For more information, please contact the Committee Chair, or the Rules Coordinator at sherry.briscoe@tax.idaho.gov or at 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.

268. IDAHO SOURCE INCOME OF NONRESIDENT AND PART-YEAR RESIDENT INDIVIDUALS – SUSPENDED LOSSES FROM PASS-THROUGH ENTITIES (RULE 268).
Section 63-3026A, Idaho Code.

01. In General. A nonresident individual's suspended losses from a pass-through entity are included in Idaho taxable income in the year included in federal taxable income only to the extent the losses were from an Idaho source in the year incurred. ( )

a. Suspended Loss. For purposes of this rule, a suspended loss is a loss required to be carried over to a succeeding taxable year due to Section 465(a), Section 704(d), or Section 1366(d) of the Internal Revenue Code. ( )

b. Idaho Source. A suspended loss is from an Idaho source in the year incurred to the extent provided by Section 63-3026A, Idaho Code, and related rules. For purposes of this rule, the Idaho source portion of a suspended loss subject to apportionment is determined by multiplying the loss by the Idaho apportionment factor of the pass-through entity in the year the loss was incurred. The Idaho apportionment factor is determined pursuant to Section 63-3027, Idaho Code, and related rules. ( )

c. Year Loss Incurred. For purposes of this rule, "year incurred" means the tax year the loss was first suspended. ( )

d. Example**.** A nonresident individual's federal taxable income includes one hundred thousand dollars ($100,000) of loss from a partnership. Sixty thousand dollars ($60,000) of that loss was incurred in the prior tax year and suspended due to the basis limitation of Section 704(d) of the Internal Revenue Code. Forty thousand ($40,000) of that loss was incurred in the current tax year. The Idaho apportionment factor of the partnership is one hundred percent (100%) in the current year and fifty percent (50%) in the prior year. The individual's Idaho taxable income includes seventy thousand dollars ($70,000) of the partnership's loss, computed as follows: ($60,000 prior year suspended loss x 50% prior year Idaho apportionment factor plus ($40,000 current year loss x 100% current year Idaho apportionment factor). ( )

02. Losses from Multiple Years. For purposes of this rule, losses from a pass-through entity are considered used in the order incurred. ( )

a. Example**.** A nonresident individual has suspended losses from a partnership of one hundred thousand dollars ($100,000). The suspended losses consist of forty thousand dollars ($40,000) of loss incurred in Year 1 and sixty thousand dollars ($60,000) of loss incurred in Year 2. The individual also has a loss from the partnership in the current year of fifty thousand dollars ($150,000). The partnership's Idaho apportionment factor is one hundred percent (100%) in the current year and fifty percent (50%) in each of the preceding years. Due to the loss limitation of Section 704(d) of the

Internal Revenue Code, the individual's current year deduction is limited to one hundred thousand dollars ($100,000). The $100,000 loss allowed in computing federal taxable income is considered to be $40,000 of suspended loss from Year 1 and $60,000 of suspended loss from Year 2. The amount included in Idaho taxable income is $ 50,000, computed as follows: ($40,000 Year 1 loss x 50% Idaho apportionment factor) plus ($60,000 Year 2 loss x 50% Idaho apportionment factor). ( )

275. IDAHO SOURCE INCOME OF NONRESIDENT AND PART-YEAR RESIDENT INDIVIDUALS -- INVESTMENT INCOME FROM QUALIFIED INVESTMENT PARTNERSHIPS (RULE 275).
Section 63-3026A(3)(c), Idaho Code.

01. In General. (4-11-06)

a. For taxable years beginning on or after January 1, 2007, the Idaho taxable income of a nonresident individual does not include the distributive share of investment income of a qualified investment partnership. The distributive share of noninvestment income of a qualified investment partnership derived from or related to sources within Idaho is included in Idaho taxable income. See Rule 250 of these rules for information on when pass-through income from a partnership is deemed to have been received. (2-27-12)

b. The exemption from tax on investment income from a qualified investment partnership does not apply to gains or losses derived from the sale of a nonresident individual's interest in a qualified investment partnership. The source of these gains and losses is governed by Section 63-3026A(3)(a)(vii), Idaho Code, and Rule 266 of these rules. The source of investment income that is not from a qualified investment partnership is determined as provided in Rule 263 of these rules. (2-27-12)

02. Qualified Investment Partnership. An entity is a qualified investment partnership only if it meets both of the following criteria: (2-27-12)

a. The entity is classified as a partnership for federal income tax purposes, but is not a publicly traded partnership taxed as a corporation under Section 63-3006, Idaho Code. (4-2-08)

b. The gross income from investments of the entity is derived at least ninety percent (90%) from investments that when held by a nonresident individual directly, would not produce income subject to the Idaho income tax. See Rules 263 and 266 of these rules. (2-27-12)

03. Investment Income. For purposes of this exclusion, an item of partnership income is investment income only if it would not be Idaho taxable income of a nonresident individual if the individual held the investment directly.

04. Examples. (2-27-12)

a. A is a nonresident individual member of ABC, a partnership operating solely within Idaho. The taxable income of ABC for the taxable year consists of ninety thousand dollars ($90,000) of dividend income and ten thousand dollars ($10,000) of capital gains from stock trading through a brokerage account. If A held the stock directly, Section 63-3026A(3)(a)(iii), Idaho Code, provides that the dividends and capital gains would not be included in Idaho taxable income. Since at least ninety percent (90%) of

ABC's income is from investments that would not be taxable to a nonresident individual if held directly by that individual, ABC is a qualified investment partnership and none of A's distributive share of the income is included in Idaho taxable income even though ABC is an Idaho partnership. (2-27-12)

b. Assume the same facts as in Paragraph 275.04.a. of this rule, except that the ten thousand dollars ($10,000) of capital gains is from the sale of Idaho real property. Since at least ninety percent (90%) of ABC's income is from investments that would not be taxable to a nonresident individual if held directly by that individual, ABC is a qualified investment partnership. A's distributive share of ABC's dividend income is excluded from A's Idaho taxable income, but A's distributive share of ABC's gain from the sale of Idaho real property is included in Idaho taxable income because Section 63-3026A(3), Idaho Code, provides that such income would be taxable to A if A had owned the property directly. (2-27-12)

c. A is a nonresident individual member of ABC, a partnership operating solely within Idaho. The taxable income of ABC for the taxable year consists of eighty thousand dollars ($80,000) of dividend income and twenty thousand dollars ($20,000) of capital gains from the sale of Idaho real property. ABC is not a qualified investment partnership because less than ninety percent (90%) of ABC's income is from investments that would not be taxable to a nonresident individual if held directly by that individual. A's distributive share of ABC's dividend income and capital gain income is included in Idaho taxable income as provided in Rule 263 of these rules. (2-27-12)

d. A is a nonresident individual partner in ABC, a partnership with a 50% Idaho apportionment factor. The gross income of ABC consists of ninety thousand dollars ($90,000) of dividend income, five thousand dollars ($5,000) of capital gain from the sale of non-Idaho real property used in the trade or business, and five thousand dollars ($5,000) of gross business income. Since at least ninety percent (90%) of ABC's gross income is from investments that would not be taxable to a nonresident individual if held directly by that individual, ABC is a qualified investment partnership. A's distributive share of ABC's dividend income is excluded from A's Idaho taxable income, but 50% of A's distributive share of ABC's gain from the sale of non-Idaho real property and 50% of A's distributive share of ABC's other business income is included in Idaho taxable income, based on the Idaho apportionment factor of the partnership as provided in Section 63-3026A(3)(a)(i) and Rule 263 of these rules.