

**IDAPA 35 – IDAHO STATE TAX COMMISSION****35.01.01 – INCOME TAX ADMINISTRATIVE RULES****000. LEGAL AUTHORITY (RULE 000).**

In accordance with Sections 63-105 and 63-3039, Idaho Code, the Tax Commission has promulgated rules implementing the provisions of the Idaho Income Tax Act. ~~The rules relating to the administration and enforcement of income taxes as well as other taxes, such as sales taxes, are promulgated as IDAPA 35.02.01.~~ (3-20-97)

**001. TITLE AND SCOPE (RULE 001).**

Section 63-3039, Idaho Code.

~~01. Title. These rules are titled IDAPA 35.01.01.000, et seq., Idaho State Tax Commission Rules IDAPA 35.01.01, "Income Tax Administrative Rules."~~ (2-27-12)

**02. Scope.** These rules will be construed to reach the full jurisdictional extent of the state of Idaho's authority to impose a tax on income of all persons who derive income from Idaho sources or who enjoy benefits of Idaho residence. (2-27-12)

**03. Effective Date.** To the extent allowed by statute, rules in this chapter will be applied on their effective date to all taxable years open for determining tax liability. (2-27-12)

**04. Closed Years or Issues.** Taxable years closed by the statute of limitations remain closed and are not reopened by the promulgation, repeal or amendment of any rule. Issues resolved by the expiration of appeal time, a notice of deficiency determination, or a final decision of the Tax Commission will not be reopened by the promulgation, repeal, or amendment of any rule. (2-27-12)

**05. Transactions Before an Effective Date.** A rule will not be applied to transactions occurring before its effective date in a case where, in the opinion of the Tax Commission, to do so would create an obvious injustice. (2-27-12)

**002. ADMINISTRATIVE APPEALS (RULE 002).**

~~This chapter allows administrative relief as provided in Sections 63-3045, 63-3045A, 63-3045B, and 63-3049, Idaho Code.~~ (3-20-97)

**003. INCORPORATION BY REFERENCE (RULE 003).**

These rules incorporate by reference the following documents, which may be obtained from the main office of the Idaho State Tax Commission: (3-15-02)

**01. MTC Special Industry Regulations.** These documents are found on the Multistate Tax Commission (MTC) Website at <http://www.mtc.gov/Uniformity/Adopted-Uniformity-Recommendations>, or can be obtained by contacting the MTC, 444 N. Capitol Street, NW, Suite 425, Washington, DC 20001. See Rules 580 and 581 of these rules. (4-2-08)

**02. MTC Recommended Formula for the Apportionment and Allocation of Net Income of Financial Institutions.** This rule incorporates the MTC Recommended Formula for the Apportionment and Allocation of Net Income of Financial Institutions as adopted November 17, 1994. This document is found on the MTC Website at [http://www.mtc.gov/uploadedFiles/Multistate\\_Tax\\_Commission/Uniformity/Uniformity\\_Projects/A\\_-\\_Z/FormulaforApportionmentofNetIncomeFinInst.pdf](http://www.mtc.gov/uploadedFiles/Multistate_Tax_Commission/Uniformity/Uniformity_Projects/A_-_Z/FormulaforApportionmentofNetIncomeFinInst.pdf) or can be obtained by contacting the MTC, 444 N. Capitol Street, NW, Suite 425, Washington, DC 20001. See Rule 582 of these rules. (3-29-17)

**004. -- 009. (RESERVED)**

**010. DEFINITIONS (RULE 010).**

Section 63-3003, Idaho Code

~~**01. Administration and Enforcement Rules.** The term Administration and Enforcement Rules refers to IDAPA 35.02.01, relating to the administration and enforcement of Idaho taxes. (3-20-97)~~

**02. Due Date.** As used in these rules, due date means the date prescribed for filing without regard to extensions. (3-20-97)

~~**03. Employee.** An employee is an individual who performs services for another individual or organization that controls what services are performed and how they are performed. (3-20-97)~~

~~**04. Employer.** An employer is any person or organization for whom an individual performs services as an employee. (3-20-97)~~

**05. Mathematical Error.** A mathematical error includes arithmetical errors, incorrect computations, omissions, defects in a return, and entries on the wrong line. (3-20-97)

**06. Sale.** A sale is defined as a transaction in which title passes from the seller to the buyer, or when possession and the burdens and benefits of ownership are transferred to the buyer. A sale may have occurred even if the buyer does not have the right to possession until he partially or fully satisfies the terms of the contract. (3-20-97)

**07. Tax Home.** For income tax purposes, the term tax home refers to the taxpayer's principal place of business, employment, station, or post of duty regardless of where he maintains his personal or family residence. Thus, a taxpayer domiciled or residing in Idaho with a permanent post of duty in another state is an Idaho resident for Idaho income tax purposes. However, he is not entitled to a deduction for travel expenses incurred in the other state since that is his tax home. (3-20-97)

**08. Terms.** Terms not otherwise defined in the Idaho Income Tax Act or these rules will have the same meaning as is assigned to them by the Internal Revenue Code including Section 7701 relating to definitions of terms. (3-20-97)

~~**09. These Rules.** The term these rules refers to IDAPA 35.01.01, relating to Idaho income tax. (3-20-97)~~

**10. Wages.** The term wages relates to all compensation for services performed for an employer regardless of the form of payment. (3-20-97)

**011. -- 014. (RESERVED)**

**015. INTERNAL REVENUE CODE (RULE 015).**

Section 63-3004, Idaho Code

**01. Interpretations.** Interpretations of the Internal Revenue Code may be found in various sources. These sources include decisions of the Tax Court, Congressional Committee Reports, General Counsel Memoranda, Decisions of the Federal and State Courts on federal income tax issues and Treasury Regulations. These interpretations are adopted by this reference to the extent that they are not in conflict with or inconsistent with the Idaho Code or administrative rules. (3-20-97)

**02. Retroactive Amendments.** For the purpose of determining federal taxable income, any retroactive amendments to the Internal Revenue Code that are enacted on or before the date found in Section 63-3004(a), Idaho Code, are applied retroactively to the extent allowed under federal law. (3-26-19)

**03. Tax Commission Granted Discretion in Determining Correctness of Tax Return.** Discretion granted to the Secretary of the Treasury to determine or reallocate items of income or adjustments to income, deductions, expenses, credits or other subjects of taxation by the Internal Revenue Code may also be exercised by the

Tax Commission and its authorized agents, employees and deputies to enforce and administer the Idaho Income Tax Act and these rules. (3-20-97)

**016. IDAHO GROSS INCOME (RULE 016).**

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. (3-25-16)

**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). (3-25-16)

**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. (3-25-16)

**04. Idaho Source Gross Income from a Pass-Through Entity.** (3-25-16)

**a. Partnership.** The amount of a partner's gross income from Idaho sources is: (3-25-16)

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 (3-25-16)

ii. The partner's distributive share of gross income allocated to Idaho. (3-25-16)

**b. S Corporation.** The amount of a shareholder's gross income from Idaho sources is: (3-25-16)

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 (3-25-16)

ii. The shareholder's pro rata share of gross income allocated to Idaho. (3-25-16)

**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. (3-25-16)

~~**05. Examples.** (3-25-16)~~

~~**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). (3-25-16)~~

~~**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). (3-25-16)~~

~~**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. (3-25-16)~~

~~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. (3-25-16)~~

~~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. (3-25-16)~~

~~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. (3-25-16)~~

#### **017. TREATMENT OF THE SECTION 965 OF THE INTERNAL REVENUE CODE INCREASE IN SUBPART F INCOME AND RELATED EXCLUSIONS (RULE 017).**

Section 63-3002, Idaho Code

Subpart F income as defined in Section 952, Internal Revenue Code, is gross income under Section 951(a), Internal Revenue Code, and included in a taxpayer's taxable income under the Internal Revenue Code. Idaho taxpayers must include the Section 965, Internal Revenue Code, increase in their subpart F income (Section 965(a) reduced by Section 965(c), Internal Revenue Code), when computing their Idaho taxable income regardless of how such income is reported to the Internal Revenue Service on the federal income tax form. (3-26-19)

**018. -- 024. (RESERVED)**

#### **025. TAXABLE YEAR AND ACCOUNTING PERIOD (RULE 025).**

Section 63-3010, Idaho Code

**01. In General.** A taxpayer will file his Idaho return for the same taxable year as filed for federal income tax purposes. If a federal return is not filed, the taxable year will be the taxable year required by the Internal Revenue Code, any other period that may be required by law, or the calendar year. Taxable year generally corresponds to the taxpayer's annual accounting period unless a short-period return is required. (7-1-98)

**02. Change of Accounting Period.** (3-20-97)

**a.** If a taxpayer changes his accounting period for federal income tax purposes, he will make the same change for the same period for Idaho income tax purposes. If prior approval of the Commissioner of the Internal Revenue Service is required, a copy of that approval will accompany the Idaho short-period return. (3-20-97)

**b.** If a change does not require prior approval of the Commissioner of the Internal Revenue Service, the change will be noted on the Idaho short-period return, along with a statement that no prior approval was required and the authority cited. (3-20-97)

**026. -- 029. (RESERVED)**

**030. RESIDENT (RULE 030).**

Section 63-3013, Idaho Code

**01. Resident.** The term resident applies to individuals, estates, and trusts. (3-20-97)

~~a. An individual is a resident if he meets either of the tests set forth in Section 63-3013, Idaho Code. For the rules relating to the residency status of aliens, see Rule 031 of these rules. For the rules relating to the residency status of servicemembers and their spouses, see Rule 032 of these rules. For the rules relating to Native Americans, see Rule 033 of these rules.~~ (2-27-12)

~~b. For the rules relating to the residency status of estates, see Rule 034 of these rules.~~ (3-20-97)

~~c. For the rules relating to the residency status of trusts, see Rule 035 of these rules.~~ (3-20-97)

**02. Domicile.** The term domicile means the place where an individual has his true, fixed, permanent home and principal establishment, and to which place he has the intention of returning whenever he is absent. An individual can have several residences or dwelling places, but he legally can have but one domicile at a time. (3-20-97)

**a.** Domicile, once established, is never lost until there is a concurrence of a specific intent to abandon an old domicile, an intent to acquire a specific new domicile, and the actual physical presence in a new domicile. (3-20-97)

**b.** All individuals who have been domiciled in Idaho for the entire taxable year are residents for Idaho income tax purposes, even though they have actually resided outside Idaho during all or part of the taxable year, except as provided in Section 63-3013(2), Idaho Code. (7-1-98)

~~c. An individual meeting the safe harbor exception set forth in Section 63-3013(2), Idaho Code, is not considered a resident of Idaho.~~ Any individual meeting the safe harbor exception to residency status is either a nonresident or part-year resident. (7-1-98)

**d.** The safe harbor exception to being a resident of Idaho does not apply to a servicemember or a servicemember's spouse domiciled in Idaho if the Servicemembers Civil Relief Act applies to the individual. (2-27-12)

~~**03. Place of Abode.** See Rule 040 of these rules for information as to what constitutes a place of abode.~~ (7-1-98)

**031. ALIENS (RULE 031).**

Sections 63-3013, 63-3013A, and 63-3014, Idaho Code

**01. Idaho Residency Status.** For purposes of the Idaho Income Tax Act, an alien may be either a resident, part-year resident, or nonresident, except a nonresident alien as defined in Section 7701, Internal Revenue Code, will be a nonresident. ~~See Paragraph 031.01.b., of this rule.~~ (3-30-07)

**a.** An alien will determine his Idaho residency status using the tests set forth in Sections 63-3013, 63-3013A, and 63-3014, Idaho Code. (3-30-07)

~~b. A nonresident alien as defined in Section 7701, Internal Revenue Code, is a nonresident for Idaho.~~ If a nonresident alien has elected to be treated as a resident of the United States for federal income tax purposes, he will determine his Idaho residency status as provided in Paragraph 031.01.a., of this rule. (3-30-07)

~~**02. Computation of Idaho Taxable Income.**~~ (3-20-97)

~~a. To compute the Idaho taxable income of an alien, the first step is to determine his taxable income. This will depend on whether the alien is a resident, nonresident, or dual status alien for federal income tax purposes.~~ (3-20-97)

~~b. Once the alien's taxable income has been computed, the amount of income subject to Idaho income tax depends on the alien's Idaho residency status. In general, if the alien qualifies as an Idaho resident, he is subject to Idaho income tax on all his taxable income regardless of its source. If the alien qualifies as a part-year resident or nonresident of Idaho, the amount of his taxable income subject to Idaho income tax is determined pursuant to Section 63-3026A, Idaho Code, and Rules 250 through 259 of these rules. (3-20-97)~~

~~c. In the case of a nonresident alien who does not elect to be treated as a resident for federal income tax purposes, the standard deduction is zero (0). However, a nonresident alien who qualifies as a student or business apprentice eligible for the benefits of Article 21(2) of the United States - India Income Tax Treaty is entitled to the standard deduction amount as if he were a resident for federal income tax purposes provided he does not claim itemized deductions. (7-1-99)~~

**03. Filing Status.** An alien will use the same filing status for the Idaho return as used on the federal return. If for federal income tax purposes a married alien files as a nonresident alien and does not elect to be treated as a resident, the married alien will use the filing status married filing separate on the Idaho return. (3-30-01)

**04. Copy of Federal Forms Required.** In addition to the requirements set forth in Rule 800 of these rules, a nonresident alien will attach a copy of the following forms to his Idaho individual income tax return: (4-2-08)

a. Form 8843 if filed with the IRS; (4-2-08)

b. All Forms 1042-S received for the taxable year. (4-2-08)

**032. MEMBERS OF THE UNIFORMED SERVICES (RULE 032).**

Section 63-3013, Idaho Code

**01. Servicemembers Civil Relief Act.** Section 511 of the Servicemembers Civil Relief Act (50 U.S.C. App. Section 571) provides that a servicemember will neither lose nor acquire a residence or domicile with regard to his income tax as a result of being absent or present in a state due to military orders. (4-7-11)

**02. Servicemember.** A servicemember is defined to include any member of the uniformed services as that term is defined in 10 U.S.C. Section 101(a)(5). A member of the uniformed services includes: (4-7-11)

a. A member of the armed forces, which includes a member of the Army, Navy, Air Force, Marine Corps, or Coast Guard on active duty. It also includes a member of the National Guard who has been called to active service by the President of the United States or the Secretary of Defense of the United States for a period of more than thirty (30) consecutive days under 32 U.S.C. Section 502(f), for purposes of responding to a national emergency declared by the President and supported by federal funds. (4-2-08)

b. The commissioned corps of the National Oceanic and Atmospheric Administration in active service; and (4-2-08)

c. The commissioned corps of the Public Health Service in active service. (4-2-08)

**03. Idaho Residency Status.** (4-7-11)

a. A servicemember does not become an Idaho resident for income tax purposes by reason of being present in Idaho solely in compliance with military orders. (2-27-12)

b. A servicemember does not lose his status as an Idaho resident for income tax purposes by reason of being absent from Idaho solely in compliance with military orders. The safe harbor exception to being a resident as provided in Section 63-3013(2), Idaho Code, does not apply to a servicemember covered by the federal law. (2-27-12)



**c.** If a servicemember is present in or absent from Idaho for reasons other than compliance with military orders, the standard analysis of residency under Sections 63-3013, 63-3013A, and 63-3014, Idaho Code, applies. (2-27-12)

~~**d.** See Subsection 032.07 of this rule for information relating to a spouse of a servicemember. (2-27-12)~~

**04. Military Service Compensation. (4-7-11)**

**a.** Section 511 of the Servicemembers Civil Relief Act (50 U.S.C. App. Section 571) provides that the military service compensation of a servicemember who is not domiciled in Idaho is not considered income from Idaho sources. (4-7-11)

**b.** The military service compensation of a servicemember who is domiciled in Idaho is subject to Idaho income tax. However, Section 63-3022(h), Idaho Code, provides that compensation paid to a member of the United States Armed Forces for active duty military service performed outside Idaho is deducted from taxable income in determining the member's Idaho taxable income. A member of the armed forces does not include the commissioned corps of the National Oceanic and Atmospheric Administration or the commissioned corps of the Public Health Service, unless they have been militarized by Presidential Executive Order under Title 42, United States Code. ~~See Section 63-3022(h), Idaho Code, for the specific qualifications of this deduction.~~ (4-7-11)

**05. Military Separation Pay.** Military separation pay received for voluntary or involuntary separation from active military service is not considered military service compensation. Therefore, Subsection 032.04 of this rule does not apply. (4-7-11)

**a.** Military separation pay is included in Idaho taxable income only if the recipient is domiciled in or residing in Idaho when the separation pay is received. (3-20-97)

**b.** For purposes of this rule, a former active duty servicemember whose home of record at the time of separation from the military was a state other than Idaho is not deemed to be residing in Idaho if he moves from Idaho within thirty (30) days from the date of separation from active duty. (3-20-97)

**06. Nonmilitary Income.** All Idaho source income earned by a servicemember is subject to Idaho taxation except as expressly limited by the Idaho Income Tax Act and these rules. (4-7-11)

**07. Spouses of Servicemembers.** Beginning on January 1, 2009, Section 511 of the Servicemembers Civil Relief Act also applies to the spouse of a servicemember. (2-27-12)

**a.** If a spouse of a servicemember has the same domicile or state of residency for tax purposes as the servicemember, the spouse of the servicemember does not become an Idaho resident for income tax purposes by reason of being present in Idaho solely to be with the servicemember who is stationed in Idaho. (2-27-12)

**b.** If a spouse of a servicemember and the servicemember are both Idaho residents for income tax purposes, the spouse of the servicemember does not lose his status as an Idaho resident for income tax purposes by reason of being absent from Idaho solely to be with the servicemember who is stationed outside of Idaho. (2-27-12)

**c.** If the spouse is not a resident of Idaho for income tax purposes because of the reason stated in Paragraph 032.07.a. of this rule, income for services performed in Idaho by the spouse will not be deemed to be income from Idaho sources. (2-27-12)

**033. AMERICAN INDIANS (RULE 033).**  
Section 63-3022S, Idaho Code

~~**01. Definitions.** For purposes of this rule: (2-27-12)~~

~~**a.** Enrolled member means an enrolled member of a federally recognized Indian tribe. (2-27-12)~~

~~b. Indian reservation means a federally recognized Indian reservation. (2-27-12)~~

**02. Idaho Residency Status.** An American Indian must determine his Idaho residency status using the tests set forth in Sections 63-3013, 63-3013A, and 63-3014, Idaho Code. Membership in an Indian tribe does not affect that individual's Idaho residency status. (2-27-12)

**03. Gambling Winnings.** (2-27-12)

a. Amounts received from gambling on an Indian reservation by an enrolled member who lives on the Indian reservation are not subject to Idaho tax. (2-27-12)

b. Amounts received from gambling on an Indian reservation by an enrolled member who lives off the Indian reservation in Idaho are subject to Idaho tax. (2-27-12)

**04. Per Capita Distributions.** (2-27-12)

a. Per capita distributions paid by an Indian tribe to an enrolled member who lives on the Indian reservation are tax-exempt by Idaho. (2-27-12)

b. Per capita distributions paid by an Indian tribe to an enrolled member who resides off the reservation in Idaho are subject to Idaho tax. (2-27-12)

**034. ESTATE -- RESIDENCY STATUS (RULE 034).**

Section 63-3015, Idaho Code

~~01. Resident Estates. An estate is treated as a resident estate if the decedent was domiciled in Idaho on the date of his or her death. If the estate is other than an estate of a decedent, it is treated as a resident estate if the person for whom the estate was created is a resident of Idaho. (3-20-97)~~

~~02. Nonresident Estates. If the estate does not qualify as a resident estate, it is treated as a nonresident estate. The tax liability of a nonresident estate is computed in the same manner as a nonresident individual. (3-20-97)~~

~~035. TRUSTS -- RESIDENCY STATUS (RULE 035).~~

~~Section 63-3015, Idaho Code~~

~~01. Resident Trusts. A trust other than a qualified funeral trust is treated as a resident trust if three (3) or more of the following conditions exist: (5-3-03)~~

~~a. The domicile or residency of the grantor is in Idaho; (3-20-97)~~

~~b. The trust is governed by Idaho law; (3-20-97)~~

~~c. The trust has real or tangible personal property located in Idaho; (3-30-01)~~

~~d. The domicile or residency of a trustee is in Idaho; (3-20-97)~~

~~e. The administration of the trust takes place in Idaho. Administration of the trust includes conducting trust business, investing assets of the trust, making administrative decisions, record keeping and preparation and filing of tax returns. (3-20-97)~~

~~02. Qualified Funeral Trusts. A qualified funeral trust is treated as a resident trust under Section 63-3015, Idaho Code, if: (5-3-03)~~

~~a. At the time of the initial funding of the trust, the trust was required to be established under the laws of Idaho; or (5-3-03)~~



~~b. The requirement in Subsection 035.02.a. did not exist, but a funeral home or cemetery located in Idaho was identified to provide services or merchandise under the terms of a preneed contract requiring the establishment of the trust. (5-3-03)~~

~~03. **Nonresident Trusts.** If the trust does not qualify as a resident trust, it is treated as a nonresident trust. The tax liability of a nonresident trust is computed in the same manner as a nonresident individual. (3-20-97)~~

~~04. **Residency Status of a Trust.** For purposes of determining the residency status of a trust, no distinction is made between inter vivos trusts and testamentary trusts, or between revocable trusts and irrevocable trusts. (3-20-97)~~

**036. -- 039. (RESERVED)**

**040. PART-YEAR RESIDENT (RULE 040).**

Section 63-3013A, Idaho Code

~~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. (3-20-14)

~~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

**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. (3-20-14)

**046. -- 049. (RESERVED)**

**050. LIMITED LIABILITY COMPANIES (RULE 050).**

~~Section 63-3006A, Idaho Code~~

~~**01. Classification.** A limited liability company will be classified for Idaho income tax purposes the same as classified for federal income tax purposes as provided by the Internal Revenue Code. (4-11-06)~~

~~**02. Application of Idaho Code and Rules.** Idaho income tax laws and administrative rules will apply according to the applicable classification of the limited liability company. For example, if a limited liability company has elected to be classified for income tax purposes as a partnership, Idaho's income tax administrative rules that apply to partnerships will also apply to such limited liability company. (4-11-06)~~

~~**051. -- 074. (RESERVED)**~~

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

Section 63-3024, Idaho Code

~~**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 2015:

IF IDAHO TAXABLE INCOME IS		IDAHO TAX		
At least	But less than	Is		Plus
\$1	\$1,452	\$0	+	1.6% of taxable income
\$1,452	\$2,904	\$23.23	+	3.6% of the amount over \$1,452
\$2,904	\$4,356	\$75.50	+	4.1% of the amount over \$2,904
\$4,356	\$5,808	\$135.03	+	5.1% of the amount over \$4,356
\$5,808	\$7,260	\$209.08	+	6.1% of the amount over \$5,808
\$7,260	\$10,890	\$297.65	+	7.1% of the amount over \$7,260
\$10,890 or more		\$555.38	+	7.4% of the amount over \$10,890

Tax and bracket amounts were calculated using consumer price index amounts published on April 13, 2015.

(3-25-16)

**b.** For taxable years beginning in 2016:

IF IDAHO TAXABLE INCOME IS		IDAHO TAX		
At least	But less than	Is		Plus
\$1	\$1,454	\$0	+	1.6% of taxable income
\$1,454	\$2,908	\$23.26	+	3.6% of the amount over \$1,454
\$2,908	\$4,362	\$75.60	+	4.1% of the amount over \$2,908
\$4,362	\$5,816	\$135.21	+	5.1% of the amount over \$4,362
\$5,816	\$7,270	\$209.36	+	6.1% of the amount over \$5,816
\$7,270	\$10,905	\$298.05	+	7.1% of the amount over \$7,270
\$10,905 or more		\$556.14	+	7.4% of the amount over \$10,905

Tax and bracket amounts were calculated using consumer price index amounts published on April 13, 2016.

(3-29-17)

**e.** For taxable years beginning in 2017:

IF IDAHO TAXABLE INCOME IS		IDAHO TAX		
At least	But less than	Is		Plus
\$1	\$1,472	\$0	+	1.6% of taxable income
\$1,472	\$2,945	\$23.56	+	3.6% of the amount over \$1,472
\$2,945	\$4,417	\$76.57	+	4.1% of the amount over \$2,945
\$4,417	\$5,890	\$136.94	+	5.1% of the amount over \$4,417
\$5,890	\$7,362	\$212.03	+	6.1% of the amount over \$5,890
\$7,362	\$11,043	\$301.85	+	7.1% of the amount over \$7,362
\$11,043 or more		\$563.21	+	7.4% of the amount over \$11,043

~~Tax and bracket amounts were calculated using consumer price index amounts published on April 13, 2017.~~

(3-28-18)

**d.** For taxable years beginning in 2018:

IF IDAHO TAXABLE INCOME IS		IDAHO TAX		
At least	But less than	Is		Plus
\$1	\$1,504	\$0	+	1.125% of taxable income
\$1,504	\$3,008	\$16.92	+	3.125% of the amount over \$1,504
\$3,008	\$4,511	\$63.91	+	3.625% of the amount over \$3,008
\$4,511	\$6,015	\$118.42	+	4.625% of the amount over \$4,511
\$6,015	\$7,519	\$187.97	+	5.625% of the amount over \$6,015
\$7,519	\$11,279	\$272.56	+	6.625% of the amount over \$7,519
\$11,279 or more		\$521.63	+	6.925% of the amount over \$11,279

~~Tax and bracket amounts were calculated using consumer price index amounts published on April 13, 2018.~~

(3-26-19)

e. For taxable years beginning in 2019:

IF IDAHO TAXABLE INCOME IS		IDAHO TAX		
At least	But less than	Is		Plus
\$1	<del>\$1,541</del>	\$0	+	1.125% of taxable income
<del>\$1,541</del>	<del>\$3,081</del>	<del>\$17.33</del>	+	<del>3.125% of the amount over \$1,541</del>
<del>\$3,081</del>	<del>\$4,622</del>	<del>\$65.47</del>	+	<del>3.625% of the amount over \$3,081</del>
<del>\$4,622</del>	<del>\$6,162</del>	<del>\$121.32</del>	+	<del>4.625% of the amount over \$4,622</del>
<del>\$6,162</del>	<del>\$7,703</del>	<del>\$192.57</del>	+	<del>5.625% of the amount over \$6,162</del>
<del>\$7,703</del>	<del>\$11,554</del>	<del>\$279.22</del>	+	<del>6.625% of the amount over \$7,703</del>
<del>\$11,554 or more</del>		<del>\$534.37</del>	+	<del>6.925% of the amount over \$11,554</del>

~~Tax and bracket amounts were calculated using consumer price index amounts published on April 13, 2019.~~

(3-20-20)

~~076. -- 077. (RESERVED)~~

**078. TAX ON TRUSTS -- ELECTING SMALL BUSINESS TRUSTS (RULE 078).**

Section 63-3024, Idaho Code

**01. In General.** The special rules for taxation of electing small business trusts as provided in Section 641, Internal Revenue Code, will apply for purposes of computing the Idaho income tax. These rules include the following: (3-20-04)

**a.** The portion of an electing small business trust that consists of stock in one (1) or more S corporations will be treated as a separate trust. (3-20-04)

**b.** The tax on the separate trust will be determined with the following modifications from the usual rules for taxing trusts: (3-20-04)

**i.** The only items of income, loss, deduction, or credit to be taken into account are the items required to be taken into account as an S corporation shareholder under Section 1366, Internal Revenue Code, and any gain or loss from the disposition of stock in an S corporation. (3-20-04)

**ii.** As provided in federal Treasury Regulations, administrative expenses will be taken into account to the extent allocable to the items described in Subparagraph 078.01.b.i. (3-20-04)

**iii.** A deduction or credit will be allowed only for an amount described in this paragraph. No item described in this paragraph will be apportioned to any beneficiary. (3-20-04)

**c.** A capital loss deduction provided by Section 1211(b), Internal Revenue Code, will be allowed only to the extent of capital gains. (3-20-04)

**02. Tax Rate Applied.** ~~The tax rates applied to the Idaho taxable income of a trust are identified in Rule 075 of these rules. For taxable years beginning on or after January 1, 2003, the maximum tax rate as listed for that~~

~~taxable year in Subsection 075.03 will apply in computing the tax attributable to the S corporation stock held by an electing small business trust.~~ (3-20-04)

**079. -- 099. (RESERVED)**

**~~100. ADJUSTMENTS TO TAXABLE INCOME -- IN GENERAL (RULE 100).~~**

~~Section 63-3022, Idaho Code. Rules 101 through 249 of these rules discuss the additions to and subtractions from taxable income required when computing the Idaho taxable income of corporations, partnerships, and resident individuals, estates and trusts. For the rules relating to the adjustments to taxable income required of nonresident and part-year resident individuals and nonresident trusts and estates, see Rules 250 through 259 of these rules.~~ (3-20-97)

**~~101. -- 104. (RESERVED)~~**

**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.~~ (3-20-14)

**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:~~ (3-20-14)

**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, a capital loss is not required to be added back where the corporation was part of a unitary group and at least one (1) member of the group was taxable by Idaho for the taxable year in which the loss was incurred.~~ (3-20-14)

**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 and before 2010.~~ (3-20-20)

**~~106. ADJUSTMENTS TO TAXABLE INCOME -- ADDITIONS REQUIRED ONLY OF CORPORATIONS (RULE 106).~~**

~~Section 63-3022, Idaho Code. As provided in Section 63-3022(d), Idaho Code, add the federal dividends received deduction subtracted in computing taxable income.~~ (5-3-03)

**~~107. ADJUSTMENTS TO TAXABLE INCOME -- ADJUSTMENTS REQUIRED ONLY OF TAXPAYERS REPORTING NONBUSINESS INCOME (RULE 107).~~**

~~Section 63-3027(a)(4), Idaho Code. All deductions relating to the production of nonbusiness income will be allocated with the income produced. See Section 63-3027, Idaho Code, and Rules 330 through 336 of these rules for the definitions of business income and nonbusiness income.~~ (4-11-06)

**~~108. ADJUSTMENTS TO TAXABLE INCOME -- ADDITIONS REQUIRED ONLY OF INDIVIDUALS (RULE 108).~~**

~~Section 63-3022, Idaho Code~~

**~~01. Lump Sum Distributions.~~** ~~As provided in Section 63-3022(k), Idaho Code, an individual must add the taxable amount of a lump sum distribution excluded from taxable income.~~ (4-7-11)

**~~02. Withdrawals from an Idaho Medical Savings Account.~~** ~~As provided in Section 63-3022K, Idaho Code, an account holder must add the amount of a withdrawal from an Idaho medical savings account if the withdrawal was not made for the purpose of paying eligible medical expenses. See Rule 190 of these rules.~~ (4-7-11)

**~~03. Withdrawals from an Idaho College Savings Program.~~** (4-2-08)

**~~a.~~** ~~As provided in Section 63-3022(o), Idaho Code, an account owner must add the amount of any nonqualified withdrawal from an Idaho college savings program, less the amount included in the account owner's gross income. The addition is limited to contributions previously exempt from Idaho state income tax and earnings generated from the program as long as the earnings are not already included in federal adjusted gross income. Nonqualified withdrawal is defined in Section 33-5401, Idaho Code.~~ (3-26-19)

**~~b.~~** ~~As provided in Section 63-3022(p), Idaho Code, an account owner must add the amount of a withdrawal from an Idaho college savings program that is transferred on or after July 1, 2007 to a qualified tuition program operated by a state other than Idaho. For taxable years beginning on or after January 1, 2008, the addback is limited to the total of the amounts contributed to the Idaho college savings program that were deducted on the account owner's Idaho income tax returns for the year of the transfer and the immediately preceding taxable year.~~ (4-7-11)

**~~04. Certain Expenses of Eligible Educators.~~** ~~As provided in Section 63-3022O, Idaho Code, prior to January 1, 2012, an eligible educator as defined in Section 62, Internal Revenue Code, must add the amount of out-~~

~~of pocket classroom expenses deducted as allowed by Section 62, Internal Revenue Code, in computing adjusted gross income. (4-4-13)~~

~~**05. State and Local Sales Tax.** As provided in Section 63-3022(j), Idaho Code, an individual must add the amount of state and local general sales taxes deducted as an itemized deduction. (4-7-11)~~

~~**109. ADJUSTMENTS TO DISTRIBUTABLE NET INCOME OF ESTATES AND TRUSTS (RULE 109).** Section 63-3022, Idaho Code. As provided in Section 63-3022(g), Idaho Code, an estate or trust will make the adjustments that are required of individuals as provided in Section 63-3022, Idaho Code, in determining the Idaho taxable income of the beneficiary of an estate or trust. (3-30-01)~~

**110. -- 114. (RESERVED)**

**115. INTEREST EXPENSE OFFSET RELATED TO TAX-EXEMPT INTEREST INCOME (RULE 115).**  
Section 63-3022M, Idaho Code

**01. In General.** The interest expense offset provided by Section 63-3022M, Idaho Code, is a separate and distinct adjustment from provisions in the Internal Revenue Code that disallow interest expense related to federal tax-exempt interest. (7-1-99)

~~**02. Tax-Exempt Interest Income.** For purposes of computing the interest expense offset attributable to tax-exempt interest income, tax-exempt interest income means interest on qualifying obligations of the United States and interest on qualifying obligations of the state of Idaho, its cities, and political subdivisions. (4-5-00)~~

**a.** If a taxpayer owns an interest in a pass-through entity, that entity's tax-exempt income is to also be included to the extent of the taxpayer's interest. (7-1-98)

**b.** Interest income that is only partially exempt for federal purposes is not included. Also, expenses related to tax-exempt interest income such as adjustments provided by Sections 265 and 291, Internal Revenue Code, are not included. (7-1-98)

~~**03. Total Income.** For purposes of computing the interest expense offset, total income is to be computed as follows: (7-1-98)~~

~~**a. Corporations.** (7-1-98)~~

~~**i.** Total income equals the amount reported as total income on Form 1120, U.S. Corporation Income Tax Return, for domestic corporations, plus the amount reported as total income on Form 1120F, U.S. Income Tax Return of a Foreign Corporation, for foreign corporations engaged in a U.S. trade or business, plus the amount of tax-exempt interest income not included in total income on Form 1120 and Form 1120F, plus the amount reported as nonexempt foreign trade income on Schedule B of Form 1120-FSC, Income Tax Return of a Foreign Sales Corporation, less the amount of foreign dividend gross-up included in federal income pursuant to Section 78, Internal Revenue Code. (3-30-01)~~

~~**ii.** If a taxpayer files a return using the worldwide combined reporting method, total income also includes the amount reported as total income on Schedule C of Form 5471, Information Return of U.S. Persons With Respect to Certain Foreign Corporations, for each foreign corporation included in the combined report. (7-1-98)~~

~~**iii.** If the corporation is a partner in a partnership, total income also includes the corporation's distributive share of the partnership's total income as reported on page one (1) of Form 1065, U.S. Partnership Return of Income, to the extent this amount is not included in total income on Form 1120. (7-1-98)~~

~~**iv.** Intercompany amounts are to be eliminated to the extent included in these amounts. (7-1-98)~~

~~**b. S Corporations.** (7-1-98)~~

~~i. Total income is to equal the amount reported as total income on Form 1120S, U.S. Income Tax Return for an S Corporation, plus the amounts reported as net income from rental real estate activities, net income from other rental activities, interest income, dividend income, royalty income, net short-term and long-term capital gains, other portfolio income, net gain under Section 1231, and other income as listed on Schedule K, plus the amount of tax-exempt interest income not included on Form 1120S. (3-30-01)~~

~~ii. If the S corporation is a partner in a partnership, total income also includes the appropriate partnership amounts as provided in Subsection 115.03.a.iii. (7-1-98)~~

~~e. Partnerships. (7-1-99)~~

~~i. Total income is to equal the amount reported as total income on Form 1065, U.S. Partnership Return of Income, plus the amounts reported as net income from rental real estate activities, net income from other rental activities, interest income, dividend income, royalty income, net short-term and long-term capital gains, other portfolio income, net gain under Section 1231, and other income as listed on Schedule K, plus the amount of tax-exempt interest income not included on Form 1065. (3-30-01)~~

~~ii. If the partnership is a shareholder in an S corporation, total income also includes the partnership's distributive share of the S corporation's total income as reported on page one (1) of the Form 1120S, U.S. Income Tax Return for an S Corporation, to the extent this amount is not included in total income on Form 1065. (7-1-99)~~

~~d. Individuals. (7-1-99)~~

~~i. Total income is to equal the amount reported as total income on Form 1040, U.S. Individual Income Tax Return. (7-1-99)~~

~~ii. If the individual is a partner in a partnership, total income also includes the individual's distributive share of the partnership's total income as reported on page one (1) of Form 1065, U.S. Partnership Return of Income, to the extent this amount is not included in total income on Form 1040. (7-1-99)~~

~~iii. If the individual is a shareholder in an S corporation, total income also includes the individual's distributive share of the S corporation's total income as reported on page one (1) of the Form 1120S, U.S. Income Tax Return for an S Corporation, to the extent this amount is not included in total income on Form 1040. (7-1-99)~~

~~iv. Total income also includes the amount of tax-exempt interest income not included on Form 1040, plus his share of the amount not included on Forms 1065 and 1120S. (3-30-01)~~

~~**04. Unitary Taxpayers.** The interest expense offset is to be computed at the combined group level, not within each corporate entity. Total income, interest expense, and tax-exempt interest amounts from each member of the combined group are used in computing the interest expense offset. (7-1-98)~~

~~**116. EXPENSES OTHER THAN INTEREST ATTRIBUTABLE TO TAX-EXEMPT INCOME (RULE 116).** Section 63-3022M, Idaho Code~~

~~**01. Directly Allocable Expenses.** Expenses, other than interest, that are directly allocable to exempt interest or dividend income, is to be allocated to such income and no deduction is to be allowed for such allocated expenses. (5-3-03)~~

~~**02. Indirectly Allocable Expenses.** If an expense is indirectly allocable to both a class of nonexempt income and exempt interest or dividend income, a reasonable proportion of such expense determined in the light of all the facts and circumstances in each case is to be allocated to each class. No deduction is allowed for expenses indirectly allocated to exempt interest or dividend income. (5-3-03)~~

**117. -- 119. (RESERVED)**

**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.** (3-20-14)

**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.~~ (3-20-14)

**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 and before 2010. (3-20-20)

**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

**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 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 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 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. (3-20-14)

**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)

**e.** For taxable years beginning on or after January 1, 2000, the standard deduction allowed on a married filing joint return 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. (3-20-14)

**04. ~~Social Security and Railroad Retirement Benefits.~~** As provided in Section 63-3022(l), 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(e), 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.~~

~~(3-20-14)~~



**122. ADJUSTMENTS TO TAXABLE INCOME -- SUBTRACTIONS AVAILABLE ONLY TO CORPORATIONS (RULE 122).**

Sections 63-3022 and 41-3821, Idaho Code

~~**01. Foreign Dividend Gross-Up.** As provided in Section 63-3022(f), Idaho Code, subtract the amount reported as a dividend pursuant to Section 78, Internal Revenue Code. (4-6-05)~~

**02. Stock Insurance Subsidiary Dividends or Distributions. (4-6-05)**

**a.** As provided in Section 41-3821, Idaho Code, a mutual insurance holding company or an intermediate holding company is to subtract the amount received as a dividend or distribution from a stock insurance subsidiary. ~~The deduction is allowed for taxable years beginning on or after January 1, 2004. (4-6-05)~~

**b.** The deduction allowed by Section 41-3821, Idaho Code, is not allowed if the stock insurance subsidiary's Idaho premium tax liability for the preceding taxable year is less than the stock insurance subsidiary would have paid in Idaho income tax had it been subject to Idaho income taxation for that year. The Idaho premium tax liability is the amount of total premium taxes less total premium tax credits allowed. The Idaho income tax it would have paid is to be computed as provided by Section 63-3027, Idaho Code, net of any applicable income tax credits. (4-6-05)

**c.** The taxpayer claiming the deduction is to include in its Idaho income tax return for the year the deduction is claimed information that it is entitled to the deduction. Such information is to include the amount of the stock insurance subsidiary's Idaho premium tax for the preceding taxable year and the amount of Idaho income tax it would have paid for such year. (4-6-05)

**123. -- 124. (RESERVED)****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

**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 and before 2010 (3-20-14)

**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)

**126. -- 127. (RESERVED)**

**128. IDAHO ADJUSTMENTS -- PASS-THROUGH ENTITIES (RULE 128).**

**01. In General.** An adjustment to a partnership, S corporation, estate or trust allowed or required by Idaho statute generally is claimed on the income tax returns of the partners, shareholders, or beneficiaries of the entity. (3-20-97)

**a.** Partnerships. An adjustment passes through to a partner based on that partner's distributive share of partnership profits. (3-20-97)

**b.** S Corporations. An adjustment passes through to a shareholder based on that shareholder's pro rata share of income or loss. (3-20-97)

**c.** Estates and Trusts. An adjustment passes through to a beneficiary in the same ratio that income is allocable to that beneficiary. (3-20-97)

**02. Limitations.** Deductions claimed on a partner's, shareholder's, or beneficiary's tax return may not exceed the limitations imposed by statute or rule. (3-20-97)

**03. Different Taxable Year Ends.** If a pass-through entity has a taxable year end different from that of a partner, shareholder, or beneficiary, the adjustment is to be claimed in the same taxable year that income or loss from that entity is reported for federal income tax purposes. (3-20-97)

**04. Information Provided by a Pass-Through Entity.** The pass-through entity will prepare and distribute to each partner, shareholder, or beneficiary a schedule detailing the proportionate share of each adjustment. Copies of these schedules is to be attached to the pass-through entity's Idaho income tax return or information return for the taxable year that the adjustment is allowed or required. (3-20-97)

**05. Pass-Through Entities That Pay Tax.** Generally, a pass-through entity is to report the same Idaho adjustments as those allowed to the individual partner, shareholder, or beneficiary for whom the pass-through entity is paying the tax. However, certain deductions that may be allowed to the individual if reporting and paying the tax is not allowed to the pass-through entity. (5-8-09)

**a.** See Rule 291 of these rules for information on computing the taxable income on which a pass-through entity is to be subject to tax. (5-8-09)

**b.** See Subsection 173.01 of these rules for the disallowance of an Idaho capital gains deduction to a pass-through entity paying the tax for an electing owner or beneficiary. (5-8-09)

**129. (RESERVED)**

**130. DEDUCTION OF CERTAIN RETIREMENT BENEFITS (RULE 130).**

Section 63-3022A, Idaho Code

**01. Qualified Benefits.** Subject to limitations, the following benefits qualify for the deduction: (3-20-97)

**a.** Retirement annuities paid to a retired civil service employee. For purposes of this deduction a retired civil service employee is an individual who is receiving retirement annuities paid under the Civil Service Retirement System, the Foreign Service Retirement and Disability System, or the offset programs of these systems. An individual is entitled to benefits from this retirement system only if he established eligibility prior to 1984. Retirement annuities paid to a retired federal employee under the Federal Employees Retirement System generally do not qualify for the deduction. Retirement annuities received under the Federal Employees Retirement System by a retiree previously covered under the Civil Service Retirement System qualify to the extent the retiree establishes the portion of the annuity attributable to coverage under the Civil Service Retirement System. (3-25-16)

**b.** Retirement benefits paid as a result of participating in the firemen's retirement fund of the state of Idaho as authorized by Title 72, Chapter 14, Idaho Code. A fireman is entitled to benefits from this fund only if he established eligibility as a paid fireman prior to October 1, 1980. Retirement benefits paid out of the public employee's retirement system do not qualify for the deduction. (3-25-16)

**c.** Retirement benefits paid to a retired Idaho city police officer: (4-4-13)

**i.** By a city or its agent in regard to a policeman's retirement fund that no longer admits new members and on January 1, 2012, was administered by a city in this state; or (4-4-13)

**ii.** In regard to a policeman's retirement fund that no longer admits new members and on January 1, 2012, was administered by the public employee retirement system of Idaho; or (4-4-13)

**iii.** By the public employee retirement system of Idaho to a retired police officer in regard to Idaho employment not included in the federal social security retirement system; or (4-4-13)

**iv.** An unremarried widow or widower of a person described in Subparagraph 130.01.c.i., 130.01.c.ii., or 130.01.c.iii. of this rule. (4-4-13)

**d.** Retirement benefits paid by the United States Government to a retired member of the military services. (3-20-97)

**02. Unremarried Widow or Widower.** An unremarried widow or widower of a retired civil service employee, retired policeman, retired fireman, or retired member of the military services, who is sixty-five (65) or older, or sixty-two (62) and disabled, is eligible for the deduction, even though the deceased spouse was not eligible at the time of death. In this situation, the amount of the retirement benefits that can be considered for the deduction for the taxable year of the spouse's death is limited to the benefits paid to the spouse as a widow or widower. (4-4-13)

~~a. Example. In year one (1), the husband of a married couple filing a joint income tax return received civil service retirement. The husband did not qualify for the Idaho retirement deduction that year since he was not disabled and was only age sixty (60) during that year. In year two (2) the husband died. Because his wife is age sixty-three (63) and disabled in that year, she is eligible for the deduction for year two (2) but only for the amount of her husband's retirement benefits she received that year as a result of being the widow. She may not include in the computation of the deduction any amounts her husband was paid or entitled to prior to his death. For year three (3), she may compute the deduction based on all the retirement benefits she receives as the widow that year. (4-6-05)~~

~~b. Example. Assume the same facts as stated in Paragraph 130.02.a, of this rule, except that the wife is not disabled and does not reach age sixty-five (65) until year four (4). In year one (1) the husband did not qualify for the Idaho retirement deduction. In year two (2) the husband did not qualify for the deduction and the wife did not qualify after her husband died. In year three (3), the wife did not qualify. In year four (4), because the wife reaches age sixty-five (65) during that year, she is entitled to the Idaho retirement deduction on the amount of her husband's retirement she received that year as a result of being a widow. (4-6-05)~~

~~e. Example. Once the widow remarries, she will not be eligible for the Idaho retirement deduction for that year and the years that follow on the amounts she receives from her previous husband's retirement. (4-6-05)~~

**03. Married Individuals Filing Separate Returns.** Married individuals who elect to file married filing separate are not entitled to the deduction allowed by Section 63-3022A, Idaho Code. (7-1-98)

~~04. Publication of Maximum Deduction. The maximum deduction that may be subtracted when computing Idaho taxable income will be published each year in the instructions for preparing Idaho individual income tax returns. (4-4-13)~~

~~05. Disabled Individual. For purposes of this deduction, an individual is classified as disabled if he meets the requirements of Section 63-701, Idaho Code, or an individual who qualifies as a person with a "permanent disability" under Section 49-117(7)(b)(iv), Idaho Code. This includes: (4-4-13)~~

~~a. An individual recognized as disabled by the Social Security Administration pursuant to Title 42, United States Code, or by the Railroad Retirement Board pursuant to Title 45, United States Code, or by the Office of Management and Budget pursuant to Title 5, United States Code; or (4-6-05)~~

~~b. A disabled veteran of any war engaged in by the United States, whose disability is recognized as a service-connected disability of a degree of ten percent (10%) or more, or who has a pension for nonservice-connected disabilities, in accordance with laws and regulations administered by the United States Veterans Administration. (4-6-05)~~

**131. -- 139. (RESERVED)**

**140. DEDUCTION FOR ENERGY EFFICIENCY UPGRADES (RULE 140).**

Section 63-3022B, Idaho Code

~~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)~~

~~02. Qualifying Residence. The residence must be the primary residence of the taxpayer and must be located in Idaho. (3-20-14)~~

~~03. Energy Efficiency Upgrade Measure Definition. "Energy efficiency upgrade measure" means an energy efficiency improvement to the building envelope or duct system that meets or exceeds the minimum value for the improved component established by the version of the international energy conservation code (IECC) in effect in Idaho during the taxable year in which the improvement is made or accrued. The IECC in effect in Idaho refers to the version most recently adopted by the Idaho Building Code Board, including amendments made by the Board. See the Board's administrative rules at IDAPA 07.03.01, "Rules of Building Safety," Section 004. (4-4-13)~~

**04. Siding.** Siding is not considered an energy efficiency upgrade. If a layer of insulation is placed beneath siding, the cost of the insulation is deductible if it otherwise qualifies. If the siding consists of an outer shell for protection against the weather and an inner layer of insulating material, the insulating material qualifies if the cost is separately identified by the seller. (4-4-13)

~~141. - 149. (RESERVED)~~

**150. DEDUCTION FOR ALTERNATIVE ENERGY DEVICES (RULE 150).**

Section 63-3022C, Idaho Code

**01. Qualifying Residence.** The deduction applies only to a residence of an individual and does not apply to rental housing, unless the renter, rather than the owner, installs and pays for the device. (3-20-97)

**02. Converted Rental Unit.** If a residence served by an alternative energy device is converted by the owner from a rental unit to his residence, the owner is entitled to any remaining allowable deduction for the year of the conversion based on the portion of the year that the residence served as his residence. For each subsequent year, the owner is entitled to the full amount of the allowable deduction for that year assuming the residence continues to be the owner's residence. (3-20-97)

~~03. Purchase of a Residence.~~ If a residence served by an alternative energy device is sold, both the seller and the buyer are entitled to a portion of the allowable deduction for the year of the sale based on the fraction of the year each individual had ownership of the residence. The new owner is entitled to any allowable deduction remaining for each subsequent year. The deduction is allowed even if the new owner previously rented the residence as his personal residence. No more than a five thousand dollar (\$5,000) deduction may be prorated in any year. (3-20-97)

~~04. Common Distribution System.~~ (3-20-97)

~~a. If the alternative energy device is dependent on and a part of a common distribution system such as a common solar collector facility or a common pipeline that distributes geothermally heated water, the common system is an alternative energy device if owned by the users of the facility.~~ (3-20-97)

~~b. For purposes of determining the amount of the deduction, each common owner may claim the cost of the portion of the alternative energy system owned solely by that owner that serves only his residence, plus his pro rata share of the costs of installation of the common system. The pro rata share of the cost is to be the actual cost charged to the residential owner for the common system if the costs are allocated by a method that is reasonably related to the actual cost of providing the alternative energy to the various residential owners.~~ (3-20-97)

~~c. The developer of a common system should provide a statement to each common owner identifying his allocable cost of the common system. If a statement is not provided, the common owners may agree to a reasonable allocation. If the common owners are unable to determine a reasonable allocation, they may petition the Tax Commission to make the determination.~~ (3-20-97)

**05. Destruction of Wood Burning Stove.** The wood burning stove that does not meet the environmental protection agency requirements for certification is to be surrendered to the Department of Environmental Quality no later than thirty (30) days from the date of purchase of the qualifying alternative energy device. Failure to surrender the wood burning stove within the thirty (30) day period is to result in the new device failing to qualify as an alternative energy device. The thirty (30) day period may be extended only if the taxpayer can show good cause for the delay. (7-1-99)

~~151. - 159. (RESERVED)~~

~~160. DEDUCTION FOR HOUSEHOLD AND DEPENDENT CARE SERVICES (RULE 160).~~

~~Section 63-3022D, Idaho Code. Section 21, Internal Revenue Code, provides for a credit against federal income tax of a percentage of the authorized employment-related expenses incurred for the care of qualifying individuals. The allowable household and dependent care service expense is a deduction in computing Idaho taxable income. The~~

~~provisions of the Internal Revenue Code determine which dependents qualify, the maximum allowable expenses, and the qualified payees. (3-20-97)~~

~~161. -- 164. (RESERVED)~~

~~**165. ADDITIONAL HOUSEHOLD DEDUCTION OR CREDIT FOR ELDERLY OR DEVELOPMENTALLY DISABLED DEPENDENTS (RULE 165).**~~

~~Sections 63-3022E and 63-3025D, Idaho Code~~

~~**01. Developmentally Disabled Defined.** For purposes of the deduction allowed by Section 63-3022E, Idaho Code, or the credit allowed by Section 63-3025D, Idaho Code, developmentally disabled means a chronic disability that meets all of the following conditions: (7-1-99)~~

~~**a.** Is attributable to an impairment, such as intellectual disability, cerebral palsy, epilepsy, autism, or other condition closely related to or similar to one (1) of these impairments that requires similar treatment or services, or is attributable to dyslexia resulting from the impairment. The other condition must result in limitations of general intellectual functioning or adaptive behavior similar to those required for individuals with an intellectual disability. See IDAPA 16.03.10, "Medicaid Enhanced Plan Benefits," Section 501 for the developmental disability determination standards. (4-7-11)~~

~~**b.** Has continued or can be expected to continue indefinitely. (3-20-97)~~

~~**c.** Has substantial functional limitations in three (3) or more areas of major life activity. Individuals with mild intellectual disabilities, controlled epilepsy, and mild cerebral palsy may not be viewed as developmentally disabled since the criteria of substantial limitation may not be met. Individuals who succeed in developing skills to function adequately in five (5) or more major life skill areas will no longer meet the definition of developmental disability. The following are areas of major life activity: (4-7-11)~~

~~i. Self-care; (3-20-97)~~

~~ii. Receptive and expressive language; (3-20-97)~~

~~iii. Learning; (3-20-97)~~

~~iv. Mobility; (3-20-97)~~

~~v. Self-direction; (3-20-97)~~

~~vi. Capacity for independent living; and (3-20-97)~~

~~vii. Economic self-sufficiency. (3-20-97)~~

~~**d.** Reflects the need for a combination and sequence of special, interdisciplinary or generic care, treatment or other services that are of lifelong or extended duration and individually planned and coordinated. Individuals who have limited or no need for services specific to disabilities do not qualify. (3-20-97)~~

~~**02. Qualifying Individual. (3-20-97)**~~

~~**a.** Immediate Family Member. An immediate family member is an individual who meets the relationship test for being claimed as a dependent on the taxpayer's federal income tax return. The family member does not have to be claimed as a dependent on the taxpayer's income tax return to qualify. The family member must receive over one-half (1/2) of his support from the taxpayer. A spouse does not qualify as an immediate family member. (7-1-99)~~

~~**b.** Additional Household Deduction or Credit for Elderly. For purposes of the additional household deduction or credit for the elderly, a qualifying individual must be an immediate family member. (7-1-99)~~



~~e. Additional Household Deduction or Credit for Developmentally Disabled Dependents. For purposes of the additional household deduction or credit for a developmentally disabled dependent, a qualifying individual includes an immediate family member, the taxpayer, or his spouse. (7-1-99)~~

~~**03. Fractions of Years.** (7-1-99)~~

~~a. The deduction is prorated at eighty-three dollars (\$83) per month if the qualified individual lives in the household for less than a full year. A fraction of a calendar month exceeding fifteen (15) days is treated as a full month. (4-7-11)~~

~~b. The credit is not available to part-year or nonresident individuals. If the qualified individual lives in the household for less than a full year, the credit is prorated at eight dollars and thirty-three cents (\$8.33) per month. (4-7-11)~~

~~**166. -- 169. (RESERVED)**~~

**170. IDAHO CAPITAL GAINS DEDUCTION -- IN GENERAL (RULE 170).**

Section 63-3022H, Idaho Code

~~**01. Qualifying for the Idaho Capital Gains Deduction.** To qualify for the Idaho capital gains deduction, a taxpayer must report capital gain net income, as defined in Section 1222(9), Internal Revenue Code, on his federal income tax return. (4-11-06)~~

~~**02. Capital Gain Net Income Limitation.** (4-11-06)~~

~~a. The Idaho capital gains deduction may not exceed the capital gain net income included in taxable income. (4-11-06)~~

~~b. Example. A taxpayer recognizes a capital gain of five thousand dollars (\$5,000) on the sale of Idaho real property that qualifies for the deduction. The taxpayer also recognizes a capital loss of two thousand five hundred dollars (\$2,500) from the sale of shares of stock. These are the only sales during the taxable year. Sixty percent (60%) of the capital gain net income from qualified property is greater than the capital gain net income included in the taxpayer's taxable income. Therefore, the taxpayer's Idaho capital gains deduction is limited to the capital gain net income included in taxable income of two thousand five hundred dollars (\$2,500), not sixty percent (60%) of the capital gain net income from the qualified property. (4-7-11)~~

~~**03. Ordinary Income Limitation.** Gains treated as ordinary income pursuant to the Internal Revenue Code do not qualify for the Idaho capital gains deduction, including the following: (4-7-11)~~

~~a. Gain from dispositions of certain depreciable property treated as ordinary income pursuant to Sections 1245 or 1250, Internal Revenue Code. (4-7-11)~~

~~b. Gain treated as ordinary income pursuant to Section 1231(e), Internal Revenue Code, and allocated among the separate categories of net section 1231 gain as provided by Section 1(h)(8), Internal Revenue Code. Gain treated as ordinary income under Section 1231(e) and allocated among the separate categories of net section 1231 gain as provided by Section 1(h)(8), Internal Revenue Code, must be prorated within each category between the gains on property that qualifies for the Idaho capital gains deduction and gains on property that do not qualify for the Idaho capital gains deduction. (4-7-11)~~

~~c. Example. One hundred thousand dollars (\$100,000) of capital gain income is treated as ordinary income. The first seventy thousand dollars (\$70,000) of ordinary income is allocated to the net section 1231 gain in the twenty-eight percent (28%) category. None of the gain in this category qualifies for the Idaho capital gains deduction since it is all treated as ordinary income. The remaining thirty thousand dollars (\$30,000) of ordinary income is allocated to gain from property in the twenty-five percent (25%) group. The gain in this category is derived from the sale on three (3) items of equipment. Two (2) of the items were qualified property located in Idaho. The third item was located in Oregon. Each item generated a gain of twenty-five thousand dollars (\$25,000). The gain treated as ordinary income is~~



~~prorated between the three (3) items, ten thousand dollars (\$10,000) to each. As a result, fifteen thousand dollars (\$15,000) of the gain on each item remains as capital gain. The fifteen thousand dollars (\$15,000) of capital gain on each of the two items of Idaho equipment qualify for the Idaho capital gains deduction. Ten thousand dollars (\$10,000) of the gain on each of the items do not qualify since it is treated as ordinary income. The gain on the Oregon equipment does not qualify for the capital gains deduction since the equipment is not located in Idaho.~~

<del>\$100,000 of Gain Treated as Ordinary Income</del>	<del>28% Group</del>	<del>25% Group</del>		
		<del>Idaho Equipment</del>	<del>Idaho Equipment</del>	<del>Oregon Equipment</del>
<del>Total Gain in Category</del>	<del>\$70,000</del>	<del>\$25,000</del>	<del>\$25,000</del>	<del>\$25,000</del>
<del>Gain Treated as Ordinary Income</del>	<del>\$70,000</del>	<del>\$100,000 - \$70,000 = \$30,000 X \$25,000/\$75,000 = \$10,000</del>	<del>\$100,000 - \$70,000 = \$30,000 X \$25,000/\$75,000 = \$10,000</del>	<del>\$100,000 - \$70,000 = \$30,000 X \$25,000/\$75,000 = \$10,000</del>
<del>Amount Remaining as Capital Gain</del>	<del>\$0</del>	<del>\$25,000 - \$10,000 = \$15,000</del>	<del>\$25,000 - \$10,000 = \$15,000</del>	<del>\$25,000 - \$10,000 = \$15,000</del>
<del>Gain Qualifying for Idaho Capital Gains Deduction</del>	<del>\$0</del>	<del>\$15,000</del>	<del>\$15,000</del>	<del>\$0</del>

(4-7-11)

**04. Losses From Nonqualified Property.** Losses from property not qualifying for the Idaho capital gains deduction may not be netted against gains from property qualifying for the Idaho capital gains deduction before the amount of the deduction is determined. (4-11-06)

**05. Losses From Qualified Property.** (7-1-99)

**a.** Losses from property qualifying for the Idaho capital gains deduction are netted against gains from property qualifying for the Idaho capital gains deduction before the amount of the deduction is determined. (4-7-11)

**b.** A capital loss carryover from property qualifying for the Idaho capital gains deduction will be netted against current year gains from property qualifying for the Idaho capital gains deduction before the amount of the deduction is determined. If a taxpayer has a capital loss carryover consisting of qualified and nonqualified property, the qualified capital loss carryover is the proportion that the qualified capital loss bears to the total capital loss shown on the return in the prior year multiplied by the capital loss carryover. (4-7-11)

**06. Examples.** (3-20-97)

**a.** ~~A taxpayer sells two (2) parcels of Idaho real property that qualify for the deduction. These are the only sales during the taxable year. A capital gain of seven thousand five hundred dollars (\$7,500) is recognized on the sale of Parcel A. A capital loss of five thousand dollars (\$5,000) is recognized on the sale of Parcel B. Since both parcels are qualified property, the gain and loss are netted, resulting in capital gain net income from qualified property of two thousand five hundred dollars (\$2,500). The capital gains deduction is sixty percent (60%) or one thousand five hundred dollars (\$1,500).~~ (4-7-11)

**b.** ~~A taxpayer recognizes a capital gain of twenty thousand dollars (\$20,000) on the sale of Idaho real property that qualifies for the deduction. The taxpayer also recognizes a capital loss of two thousand five hundred dollars (\$2,500) from the sale of shares of stock that he has held for more than one (1) year. These are the only sales during the taxable year. In this case, since the long-term capital loss is not from qualified property, the loss on the sale of stock does not reduce the gain from qualified property for purposes of computing the deduction. The entire gain from qualified~~

~~property of twenty thousand dollars (\$20,000) is eligible for the Idaho capital gains deduction. The capital gains deduction is sixty percent (60%) or twelve thousand dollars (\$12,000).~~ (4-7-11)

### 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. See Subsection 171.05 of this rule for examples of nonqualifying property.~~ (3-25-16)

**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.** Interests in a partnership (except for interests identified in Section 63-3022H(3)(f)), Idaho Code, LLC, or S corporation. (4-11-19)

**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. Distributions. For purposes of this rule, the holding period of property received in a distribution from a partnership or from an S corporation other than in liquidation of stock includes the time the entity held the property. (3-25-16)

~~**08. Sale of a Partnership Interest.** For taxable years beginning on or after January 1, 2018, when 26 CFR 1.170A-13(c)(3) is used to determine the fair market value of the partnership's qualified real property, the language of that federal regulation is to be treated as if it sets forth an appraisal method for determining the value of the qualified real property due to the sale of the partnership interest rather than a donation of property.~~ (4-11-19)

**172. IDAHO CAPITAL GAINS DEDUCTION -- REVENUE-PRODUCING ENTERPRISE (RULE 172).**

Section 63-3022H, Idaho Code

~~**01. In General.** Only the activities listed in Section 63-3022H(5), Idaho Code, qualify as a revenue-producing enterprise.~~ (4-7-11)

**02. Nonqualifying Activities.** Examples of activities that do not qualify as a revenue-producing enterprise include the following: (4-7-11)

a. Retail sales; (4-7-11)

b. Professional or managerial services; (4-7-11)

c. Repair services or other service related activities; (4-7-11)

d. Transportation activities, unless they are an integral part of the taxpayer's qualifying activity; (4-7-11)

e. Telephone, cable, and internet services; (4-7-11)

- f. Agricultural services, such as horse training, veterinarian services, and crop dusting. (4-7-11)

**03. Multiple Activities.** If a business is engaged in both revenue-producing and nonrevenue-producing activities, tangible personal property must be used in the revenue-producing activity to qualify for the Idaho capital gains deduction. (3-20-97)

- 04. Examples.**  (4-7-11)

~~a. A taxpayer's Idaho business includes buying wool and processing it into yarn, using the yarn to manufacture clothes, and selling the clothes to the customers. Only part of the taxpayer's business activity qualifies as a revenue-producing enterprise. The activity related to retail sales does not qualify as a revenue-producing enterprise and any tangible personal property used in that activity does not qualify for the Idaho capital gains deduction.~~ (4-7-11)

~~b. A taxpayer's Idaho business includes cutting timber in a forest, transporting the logs to a sawmill, processing the logs into plywood, and selling the plywood to a furniture manufacturer. The entire business qualifies as a revenue-producing enterprise, including the selling activity, because the selling activity is at wholesale.~~ (4-7-11)

~~c. A taxpayer's Idaho business includes growing potatoes and operating a long-haul trucking business unrelated to the potato operations. Only the portion of the Idaho business involved in activities necessary to the growing of potatoes qualifies as a revenue-producing enterprise. Tangible personal property used in the taxpayer's long-haul trucking business does not qualify for the Idaho capital gains deduction.~~ (4-7-11)

### 173. IDAHO CAPITAL GAINS DEDUCTION -- PASS-THROUGH ENTITIES (RULE 173).

Section 63-3022H, Idaho Code

- 01. In General.** (3-20-97)

a. Qualified property held by an S corporation, partnership, trust, or estate may be eligible for the Idaho capital gains deduction. The deduction is allowed only on the return of an individual shareholder, individual partner, or individual beneficiary. (3-29-10)

b. Partnerships, S corporations, trusts, and estates that pay the tax for an electing individual pursuant to Section 63-3022L, Idaho Code, are not allowed to claim a capital gains deduction. (3-29-10)

**02. Multistate Entities.** A nonresident shareholder of an S corporation or a nonresident partner of a partnership required to allocate and apportion income as set forth in Section 63-3027, Idaho Code, is to compute his Idaho capital gains deduction on his interest in income of that portion of the qualifying capital gains allocated or apportioned to Idaho. (3-20-97)

- 03. Examples.**  (3-20-97)

~~a. XYZ Farms, a multistate partnership, sold three (3) parcels of farmland: one (1) in Idaho purchased seven (7) years ago, one (1) in Washington, and one (1) in Oregon. The sale of the Idaho property resulted in a forty thousand dollar (\$40,000) gain, the sale of the Washington property resulted in a thirty thousand dollar (\$30,000) gain, and the sale of the Oregon property resulted in a twenty thousand dollar (\$20,000) loss, for a net gain of fifty thousand dollars (\$50,000). The income and loss from the sale of the farmland is determined to be business income and is included in income apportionable to Idaho. The partnership has a seventy-five percent (75%) Idaho apportionment factor. The three (3) nonresident partners share equally in the partnership profits. Each nonresident partner reports capital gain net income in determining taxable income for the year and may claim an Idaho capital gains deduction of six thousand dollars (\$6,000), computed as follows: (\$40,000 Idaho gain X 75% apportionment factor = \$30,000 gain apportioned to Idaho X 1/3 interest = \$10,000 attributable to each partner X 60% = \$6,000 capital gains deduction allowable on each partner's nonresident return). For taxable year 2001 only, the capital gains deduction is eighty percent (80%) of the capital gain net income from qualified property, or eight thousand dollars (\$8,000). After 2001, the capital gains deduction returns to sixty percent (60%) or six thousand dollars (\$6,000).~~ (3-30-07)

~~**b.** Assume the same facts as in Paragraph 173.03.a. of this rule, except that one (1) of the nonresident partners reported capital gain net loss on his federal return. Because the partner did not meet the criteria of reporting capital gain net income in determining taxable income as required by Section 63-3022H(1), Idaho Code, he would not be entitled to the Idaho capital gains deduction on his Idaho return. (5-8-09)~~

~~**c.** Assume the same facts as in Paragraph 173.03.a. of this rule, except that the Oregon property was sold at a ninety thousand dollar (\$90,000) loss, resulting in capital gain net loss from the partnership. If a partner had other capital gains to report and reported capital gain net income on his federal income tax return, he would be entitled to part or all of the capital gains deduction computed on the Idaho property in Paragraph 173.03.a. of this rule, limited to the amount of the capital gain net income from all property included in taxable income by the partner. (5-8-09)~~

~~**d.** Assume the same facts as in Paragraph 173.03.a. of this rule, except that the farmland is determined to be nonbusiness income. Therefore, the forty thousand dollar (\$40,000) gain from the sale of the Idaho farmland is allocated to Idaho. Assuming each partner had no other capital gains or losses except from the partnership, each partner may claim an Idaho capital gains deduction of eight thousand dollars (\$8,000), computed as follows: (\$40,000 gain allocated to Idaho X 1/3 = \$13,333 partner's share X 60% = \$8,000 Idaho capital gains deduction allowable on each partner's nonresident return). For taxable year 2001, the capital gains deduction is eighty percent (80%) of the capital gain net income from qualified property, computed to be ten thousand six hundred and sixty-seven dollars (\$10,667). (5-8-09)~~

~~**e.** An Idaho resident partner must report all partnership income to Idaho. As a result, his share of partnership income, including any capital gain included in apportionable income, is not limited by the apportionment factor of the partnership. Therefore, in the example in Paragraph 173.03.a. of this rule, a resident partner may claim an Idaho capital gains deduction of eight thousand dollars (\$8,000) computed as follows: (\$40,000 Idaho gain X 1/3 interest X 60% = \$8,000). For taxable year 2001, the capital gains deduction is eighty percent (80%) of the capital gain net income from qualified property, computed to be ten thousand six hundred and sixty-seven dollars (\$40,000 Idaho gain X 1/3 interest X 80% = \$10,667). (5-8-09)~~

~~**f.** Gains that cannot be traced back to the sale of Idaho qualifying property do not qualify for the Idaho capital gains deduction. (3-30-07)~~

**174. -- 179. (RESERVED)**

**180. DEDUCTION FOR DONATION OF TECHNOLOGICAL EQUIPMENT (RULE 180).**

Section 63-3022J, Idaho Code

~~**01. Limitations.** The deduction for donations of technological equipment is limited to the lower of cost, fair market value, or Idaho taxable income of the taxpayer. Any amount in excess of Idaho taxable income is not allowed as a carryback or carryover. (3-20-14)~~

~~**02. Fair Market Value.** Fair market value is determined pursuant to Section 170, Internal Revenue Code. (3-20-97)~~

~~**03. Pass-Through of Deduction.** (3-20-97)~~

~~**a.** See Rule 128 of these rules for the general rules relating to deductions of pass-through entities. (3-20-97)~~

~~**b.** The limitations in Subsection 180.01 apply at the entity level. The deduction may not exceed the amount of pass-through income less deductions of the entity making the contribution. (3-20-97)~~

**181. -- 184. (RESERVED)**

**185. ADOPTION EXPENSES (RULE 185).**

Section 63-3022I, Idaho Code

~~**01. In General.** Subject to the limitations of Subsection 185.02, adoptive parents may deduct from taxable income legal and medical expenses related to the adoption of a child. Travel expenses related to the adoption may not be deducted. (3-20-97)~~

~~**02. Maximum Deduction.** The deduction allowed for a successful adoption is limited to a maximum deduction for each adopted child. For taxable years beginning before 2018, the maximum deduction is three thousand dollars (\$3,000). For taxable years beginning after 2017, the maximum deduction is ten thousand dollars (\$10,000) regardless of whether the deduction is claimed in one (1) or more years. (3-26-19)~~

~~**a. Examples:** (3-26-19)~~

~~**i.** A taxpayer spent five thousand dollars (\$5,000) in 2017 and four thousand dollars (\$4,000) in 2018 to adopt a child. He can deduct three thousand dollars (\$3,000) in 2017 and four thousand dollars (\$4,000) in 2018. (3-26-19)~~

~~**ii.** A taxpayer spent five thousand dollars (\$5,000) in 2017 and fifteen thousand dollars (\$15,000) in 2018 to adopt a child. He can deduct three thousand dollars (\$3,000) in 2017 and seven thousand dollars (\$7,000) in 2018. (3-26-19)~~

~~**03. Ineligible Expenses.** (3-20-97)~~

~~**a.** The costs associated with an unsuccessful attempt to adopt a child do not qualify for the deduction. (3-20-97)~~

~~**b.** A deduction is not allowed for expenses incurred in violation of state or federal law or for a surrogate parenting arrangement. (3-20-97)~~

~~**04. Year Deduction Allowed.** The deduction is allowed in the taxable year the expense is paid. A taxpayer is to file an amended return if he claimed any adoption expenses related to an unsuccessful attempt to adopt in a previous taxable year. (3-20-97)~~

~~**05. Financial Assistance.** Eligible expenses are to be reduced by amounts received as financial aid for the adoption, or from a grant pursuant to a federal, state, or local program. (3-20-97)~~

~~**186. -- 189. (RESERVED)**~~

**190. IDAHO MEDICAL SAVINGS ACCOUNTS (RULE 190).**

Section 63-3022K, Idaho Code

~~**01. Designation as a Medical Savings Account.** An account must be designated by a depository as a medical savings account to qualify as an Idaho medical savings account. To be designated as a medical savings account, the words medical savings account or MSA must be clearly listed on the statement provided to the account holder and be included in one (1) of the following: (5-3-03)~~

~~**a.** The name of the account; (5-3-03)~~

~~**b.** The title of the account; (5-3-03)~~

~~**c.** The description of the account; or (5-3-03)~~

~~**d.** The designation of the account. (5-3-03)~~



**02. ~~Withdrawal to Reimburse the Account Holder.~~** (4-5-00)

**a.** ~~A withdrawal from an Idaho medical savings account to reimburse the account holder for expenses he paid is not a withdrawal to pay eligible medical expenses to the extent the account balance at the time the expense was paid was less than the withdrawal.~~ (4-5-00)

**b.** ~~Example. A taxpayer's Idaho medical savings account had a balance of three hundred dollars (\$300) on March 1. On that day, he paid a medical expense costing four hundred dollars (\$400) using funds from his regular checking account. On March 10 the taxpayer deposited two hundred dollars (\$200) into his medical savings account. On March 11 he withdrew four hundred dollars (\$400) from his medical savings account to reimburse himself for the medical expense payment. Only three hundred dollars (\$300) of the withdrawal qualifies as a payment of eligible medical expenses. The taxpayer may deduct two hundred dollars (\$200) for the contribution to the account. However, he must include one hundred dollars (\$100) in Idaho taxable income in addition to paying a penalty of ten dollars (\$10).~~ (7-1-98)

**03. Pretax Contributions.** Health benefits paid with pretax contributions, such as those paid pursuant to a salary reduction agreement, are considered paid by the employer and do not qualify as an expense paid by the employee. Health benefits paid with after-tax dollars are considered paid by the employee and qualify as an expense paid by the employee. (3-20-97)

**04. ~~Contributions That Exceed the Amount Deductible.~~** ~~An account holder is limited in the amount he can contribute to his Idaho medical savings account each year to the amount deductible for that year. For taxable years beginning on or after January 1, 1995, but before January 1, 2014, the maximum amount deductible is two thousand dollars (\$2,000), four thousand dollars (\$4,000) for a joint account. For taxable years beginning on or after January 1, 2014, the maximum amount deductible is ten thousand dollars (\$10,000), twenty thousand dollars (\$20,000) for a joint account. Contributions to an Idaho medical savings account that exceed the limitation for that year and that are not withdrawn as a deposit in error within thirty (30) days from the date of deposit, will be subject to tax and the distribution penalty if withdrawn for purposes other than the payment of eligible medical expenses.~~ (4-11-15)

**05. ~~Death of a Spouse.~~** ~~If an Idaho medical savings account is established for married individuals as a joint account, no contributions will be made for an account holder who is deceased. In the year of death, one-half (1/2) of the contributions made up to the date of death will be attributed to each account holder. If the amounts are less than the maximum contribution amount, the surviving account holder may make contributions so that his total contributions for the year total the maximum contribution amount. For example, a married couple contributes three thousand dollars (\$3,000) to their medical savings account in January of 2013. In April of that year, the husband dies. The contributions made to the date of death will be attributed to each spouse with the result that each spouse is considered to have contributed one thousand five hundred dollars (\$1,500). Because the wife has not met the maximum deduction of two thousand dollars (\$2,000) for taxable year 2013, she can contribute another five hundred dollars (\$500) in that year.~~ (4-11-15)

**191. -- 192. (RESERVED)****193. HEALTH INSURANCE COSTS AND LONG-TERM CARE INSURANCE (RULE 193).**

Sections 63-3022P and 63-3022Q, Idaho Code

**01. ~~In General.~~** ~~The amounts paid by an individual taxpayer for health insurance and long-term care insurance that are not otherwise deducted or accounted for are allowed as deductions from taxable income. For taxable years beginning between January 1, 2001, and December 31, 2003, the deduction allowed for the long-term care insurance premiums was limited to fifty percent (50%) of the amount paid during the taxable year.~~ (4-6-05)

**02. Costs Deducted or Accounted For.** Deductions are not allowed for health insurance costs and premiums paid for long-term care insurance that are otherwise deducted or accounted for. ~~See Rule 194 of these rules for examples of the limitations when costs are otherwise deducted or accounted for.~~ Health insurance costs and premiums paid for long-term care insurance that are otherwise deducted or accounted for include amounts: (5-8-09)

**a.** Paid out of an Idaho medical savings account; (5-3-03)



**b.** Paid through a cafeteria plan or other salary-reduction arrangement when these costs are paid out of pretax income; or (4-6-05)

**c.** Deducted as business expenses. (5-3-03)

**03. ~~Social Security Medicare Part A.~~** (5-3-03)

**a.** ~~The payroll tax paid for Medicare A is not considered a medical expense under Section 213, Internal Revenue Code and, therefore, does not qualify for the Idaho deduction for health insurance costs. This applies to individuals who are covered by Social Security or are government employees who paid Medicare tax.~~ (5-3-03)

**b.** ~~The amount of premiums a taxpayer pays to voluntarily enroll in Medicare A is deductible under Section 213, Internal Revenue Code, and qualifies for the Idaho deduction for health insurance costs. This applies to individuals who are not covered under Social Security or who were not government employees who paid Medicare tax.~~ (5-3-03)

**04. ~~Social Security Medicare Part B.~~** ~~Amounts paid for Medicare B, which is a supplemental medical insurance, qualify for the deduction allowed under Section 213, Internal Revenue Code, and qualify for the Idaho deduction for health insurance costs.~~ (5-3-03)

**05. ~~Social Security Medicare Part D.~~** ~~Amounts paid for Medicare D, which is a voluntary prescription drug insurance program for individuals with Medicare A or B, qualify for the deduction allowed under Section 213, Internal Revenue Code, and qualify for the Idaho deduction for health insurance costs.~~ (5-8-09)

**06. ~~Medical Payments Coverage and Personal Injury Protection of Automobile Insurance.~~** ~~The portion of automobile insurance that covers medical payments coverage or personal injury protection does not qualify for the Idaho deduction for health insurance costs because the insurance coverage is not restricted to the taxpayer, the taxpayer's spouse, or the dependents of the taxpayer. This insurance provides protection to the driver and passengers of the policyholder's car or other injured parties.~~ (5-3-03)

#### **194. HEALTH INSURANCE COSTS AND LONG-TERM CARE INSURANCE -- EXAMPLES OF LIMITATIONS (RULE 194).**

Sections 63-3022P and 63-3022Q, Idaho Code

**01. ~~Examples of Limitations When Costs are Otherwise Deducted or Accounted For.~~** ~~If a taxpayer elects to itemize deductions for Idaho purposes and his medical expenses exceed the federal adjusted gross income limitation, the amount that is deducted as an itemized deduction will first apply to health insurance costs, next to long-term care insurance, and last to other medical expenses. If the premiums exceed the amount deducted as an itemized deduction, the Idaho deductions for health insurance costs and long-term care insurance may be allowed if the premiums were not otherwise deducted or accounted for. If the taxpayer does not elect to itemize deductions for Idaho purposes, or if the taxpayer is unable to deduct medical expenses as an itemized deduction due to the federal adjusted gross income limitation, the full amount of health insurance costs and premiums paid for long-term care insurance (fifty-percent (50%) of the premiums for taxable years beginning prior to 2004), not otherwise deducted or accounted for, qualify for the Idaho deduction. Amounts used for calculating the limitations must not be less than zero (0).~~ (3-20-14)

**02. ~~Example with Applicable Percentage of Federal Adjusted Gross Income Equal to Zero (0).~~**

<b>HEALTH INSURANCE AND LONG-TERM CARE INSURANCE DEDUCTION LIMITATIONS</b>	
<del>1.</del> Health insurance expenses claimed on federal Schedule A	<del>\$10,000</del>
<del>2.</del> Long-term care insurance expenses claimed on federal Schedule A	<del>\$4,000</del>
<del>3.</del> Other medical expenses claimed on federal Schedule A	<del>\$2,000</del>
<del>4.</del> Total medical expenses claimed on federal Schedule A	<del>\$16,000</del>
<del>5.</del> Applicable percentage of federal adjusted gross income	<del>\$0</del>
<del>6.</del> Medical expense deduction allowed on federal Schedule A (line 4 less line 5)	<del>\$16,000</del>
<b>HEALTH INSURANCE</b>	
<del>7.</del> Total amount paid for health insurance	<del>\$10,100</del>
<del>8.</del> Portion of health insurance expenses allowed on federal Schedule A (lesser of line 1 or line 6)	<del>\$10,000</del>
<del>9.</del> Health insurance expenses deducted elsewhere on the federal return	<del>\$100</del>
<del>10.</del> Health insurance deduction allowed for Idaho (line 7 less lines 8 and 9)	<del>\$0</del>
<b>LONG-TERM CARE INSURANCE</b>	
<del>11.</del> Total amount paid for long-term care insurance	<del>\$4,050</del>
<del>12.</del> Medical expense deduction not allocated to health insurance (line 6 less line 1)	<del>\$6,000</del>
<del>13.</del> Portion of long-term care insurance deduction allowed on federal Schedule A (lesser of line 2 or line 12)	<del>\$4,000</del>
<del>14.</del> Long-term care insurance deducted elsewhere on the federal return	<del>\$50</del>
<del>15.</del> Long-term care insurance deduction allowed for Idaho (line 11 less lines 13 and 14)	<del>\$0</del>

(3-20-14)

**03. Example with Applicable Percentage of Federal Adjusted Gross Income Equal to Three Thousand Dollars (\$3,000):**

<b>HEALTH INSURANCE AND LONG-TERM CARE INSURANCE DEDUCTION LIMITATIONS</b>		
1.	Health insurance expenses claimed on federal Schedule A	\$10,000
2.	Long-term care insurance expenses claimed on federal Schedule A	\$4,000
3.	Other medical expenses claimed on federal Schedule A	\$2,000
4.	Total medical expenses claimed on federal Schedule A	\$16,000
5.	Applicable percentage of federal adjusted gross income	\$3,000
6.	Medical expense deduction allowed on federal Schedule A (line 4 less line 5)	\$13,000
<b>HEALTH INSURANCE</b>		
7.	Total amount paid for health insurance	\$10,100
8.	Portion of health insurance expenses allowed on federal Schedule A (lesser of line 1 or line 6)	\$10,000
9.	Health insurance expenses deducted elsewhere on the federal return	\$100
10.	Health insurance deduction allowed for Idaho (line 7 less lines 8 and 9)	\$0
<b>LONG-TERM CARE INSURANCE</b>		
11.	Total amount paid for long-term care insurance	\$4,050
12.	Medical expense deduction not allocated to health insurance (line 6 less line 1)	\$3,000
13.	Portion of long-term care insurance deduction allowed on federal Schedule A (lesser of line 2 or line 12)	\$3,000
14.	Long-term care insurance deducted elsewhere on the federal return	\$50
15.	Long-term care insurance deduction allowed for Idaho (line 11 less lines 13 and 14)	\$1,000

(3-20-14)

**04. Example with Applicable Percentage of Federal Adjusted Gross Income Equal to Six Thousand Dollars (\$6,000):**

<b>HEALTH INSURANCE AND LONG-TERM CARE INSURANCE DEDUCTION LIMITATIONS</b>		
1.	Health insurance expenses claimed on federal Schedule A	\$10,000
2.	Long-term care insurance expenses claimed on federal Schedule A	\$4,000
3.	Other medical expenses claimed on federal Schedule A	\$2,000
4.	Total medical expenses claimed on federal Schedule A	\$16,000
5.	Applicable percentage of federal adjusted gross income	\$6,000
6.	Medical expense deduction allowed on federal Schedule A (line 4 less line 5)	\$10,000
<b>HEALTH INSURANCE</b>		
7.	Total amount paid for health insurance	\$10,100
8.	Portion of health insurance expenses allowed on federal Schedule A (lesser of line 1 or line 6)	\$10,000
9.	Health insurance expenses deducted elsewhere on the federal return	\$100
10.	Health insurance deduction allowed for Idaho (line 7 less lines 8 and 9)	\$0
<b>LONG-TERM CARE INSURANCE</b>		
11.	Total amount paid for long-term care insurance	\$4,050
12.	Medical expense deduction not allocated to health insurance (line 6 less line 1)	\$0
13.	Portion of long-term care insurance deduction allowed on federal Schedule A (lesser of line 2 or line 12)	\$0
14.	Long-term care insurance deducted elsewhere on the federal return	\$50
15.	Long-term care insurance deduction allowed for Idaho (line 11 less lines 13 and 14)	\$4,000

(3-20-14)

**05. ~~Example with Applicable Percentage of Federal Adjusted Gross Income Equal to Fourteen Thousand Dollars (\$14,000).~~**

<b>HEALTH INSURANCE AND LONG-TERM CARE INSURANCE DEDUCTION LIMITATIONS</b>		
<del>1.</del>	<del>Health insurance expenses claimed on federal Schedule A</del>	<del>\$10,000</del>
<del>2.</del>	<del>Long-term care insurance expenses claimed on federal Schedule A</del>	<del>\$4,000</del>
<del>3.</del>	<del>Other medical expenses claimed on federal Schedule A</del>	<del>\$2,000</del>
<del>4.</del>	<del>Total medical expenses claimed on federal Schedule A</del>	<del>\$16,000</del>
<del>5.</del>	<del>Applicable percentage of federal adjusted gross income</del>	<del>\$14,000</del>
<del>6.</del>	<del>Medical expense deduction allowed on federal Schedule A (line 4 less line 5)</del>	<del>\$2,000</del>
<b>HEALTH INSURANCE</b>		
<del>7.</del>	<del>Total amount paid for health insurance</del>	<del>\$10,100</del>
<del>8.</del>	<del>Portion of health insurance expenses allowed on federal Schedule A (lesser of line 1 or line 6)</del>	<del>\$2,000</del>
<del>9.</del>	<del>Health insurance expenses deducted elsewhere on the federal return</del>	<del>\$100</del>
<del>10.</del>	<del>Health insurance deduction allowed for Idaho (line 7 less lines 8 and 9)</del>	<del>\$8,000</del>
<b>LONG-TERM CARE INSURANCE</b>		
<del>11.</del>	<del>Total amount paid for long-term care insurance</del>	<del>\$4,050</del>
<del>12.</del>	<del>Medical expense deduction not allocated to health insurance (line 6 less line 1)</del>	<del>\$0</del>
<del>13.</del>	<del>Portion of long-term care insurance deduction allowed on federal Schedule A (lesser of line 2 or line 12)</del>	<del>\$0</del>
<del>14.</del>	<del>Long-term care insurance deducted elsewhere on the federal return</del>	<del>\$50</del>
<del>15.</del>	<del>Long-term care insurance deduction allowed for Idaho (line 11 less lines 13 and 14)</del>	<del>\$4,000</del>

(3-20-14)

**06. ~~Applicable Percentage.~~** ~~For taxable years beginning January 1, 2013, the percentage is seven and one-half percent (7.5%) if the taxpayer or spouse is age sixty-five (65) or older. The percentage for taxpayers under the age of sixty-five (65) is ten percent (10%).~~ (3-20-14)

**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.~~ (3-20-14)

**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. (3-20-14)

~~**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. (3-20-14)~~

**196. -- 199. (RESERVED)**

**200. NET OPERATING LOSS -- CORPORATIONS (RULE 200).**

Section 63-3021, Idaho Code

**01. Unitary Taxpayers.** Each corporation included in a unitary group must determine its respective share of the Idaho apportioned net operating loss incurred by the unitary group for the taxable year. A corporation's share of the net operating loss is computed using its Idaho apportionment factor for the year of the loss. The corporation must add or subtract its nonbusiness income or loss allocated to Idaho to its share of the apportioned loss. (3-20-97)

**02. Example.** 

	<b>XYZ USA, Inc.</b>	<b>Idaho XYZ</b>	<b>Oregon XYZ</b>	<b>Combined</b>
<b>Computation of Idaho Net Operating Loss (NOL):</b>				
Federal Taxable Income	(50,000,000)	5,000,000	(7,000,000)	(52,000,000)
State Adjustments	(5,000,000)	(150,000)	450,000	(4,700,000)
Unitary Business Income (Loss) Subject to Apportionment				(56,700,000)
Idaho Apportionment Factor	.000329	.006217	.000000	
Loss Apportioned to Idaho	(18,654)	(352,504)	0	
Income (Loss) Allocated to Idaho		35,000	0	
Idaho NOL	(18,654)	(317,504)	0	
<b>Application of Idaho NOL:</b>				
Idaho Taxable Income Before Carryback:				
2nd Preceding Tax Year	15,987	212,852		
1st Preceding Tax Year	29,854	447,962		
Maximum Loss Available for Carryback — Limited to the lesser of the current year NOL or \$100,000	(18,654)	(100,000)		
NOL Applied to:				
2nd Preceding Tax Year	(15,987)	(100,000)		
1st Preceding Tax Year	(2,667)	0		
NOL Available for Carryover	0	(217,504)		
<b>Taxable Income Remaining in Carryback Years:</b>				
2nd Preceding Tax Year	0	112,852		
1st Preceding Tax Year	27,187	447,962		

(4-7-11)



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

Section 63-3022(c), Idaho Code

- 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.** 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, but will not result in any tax due or refund for the closed taxable years. (3-25-16)
- 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, but will not result in any tax due or refund for the closed taxable years. (3-25-16)
- 04. Net Operating Loss Carrybacks Application.** (3-20-14)
- 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. (3-20-14)
- e.** ~~Except as provided in Paragraphs 201.04.d. and 201.04.f, a net operating loss is applied as follows:~~ (3-20-14)
- i.** ~~Net operating losses incurred in taxable years beginning on and after January 1, 1990, but prior to January 1, 2000, 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.~~ (3-20-14)
- ii.** ~~Net operating losses incurred in taxable years beginning on and after January 1, 2000, 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.~~ (3-20-14)
- 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.~~ (3-20-14)

**d.** 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.c. do not apply and the net operating loss carryover is applied as follows: (3-20-14)

~~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. (3-20-14)

**e.** 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. (3-20-14)

**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. (3-20-14)

**05. Timing and Method of Electing to Forego Carryback For Taxable Years Beginning Before January 1, 2013.** (3-20-14)

**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.c. (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)

**202. -- 209. (RESERVED)**

**210. REDUCTION OF IDAHO TAX ATTRIBUTES AND BASIS WHEN INCOME FROM INDEBTEDNESS DISCHARGE IN BANKRUPTCY IS EXCLUDED FROM GROSS INCOME (RULE 210).**

Section 63-3022(c), Idaho Code

**01. In General.** Any taxpayer excluding from taxable income an amount resulting from the discharge of indebtedness in bankruptcy under Section 108(b) of the Internal Revenue Code, is to reduce Idaho net operating loss and basis in accordance with Section 346 of the Bankruptcy Code of the United States. If the discharge occurs outside of bankruptcy, the provisions of these rules do not apply. (7-1-99)

**02. Order of Reduction.** The reduction referred to in Subsection 210.01 is to be made to the following tax attributes in the following order: (7-1-99)

**a.** Any net operating loss deduction, as defined in Rule 201 of these rules, is to be reduced by the amount of the indebtedness forgiven or discharged in bankruptcy except as follows: (7-1-99)

**i.** A deduction with respect to the liability which is disallowed for any taxable period during or after the liability is forgiven or discharged. A deduction with respect to the liability includes a capital loss incurred on the disposition of a capital asset with respect to a liability that was incurred in connection with the acquisition of such asset. (7-1-99)

**ii.** To the extent that the indebtedness forgiven or discharged consisted of items of a deductible nature that were not deducted by the taxpayer, or resulted in an expired net operating loss deduction or carryover that did not offset income for any taxable period and did not contribute to a net operating loss in or a net operating loss carryover to the taxable period during or after the indebtedness was discharged. (7-1-99)

**b.** The basis in the taxpayer's property or of property transferred to an entity required to use the taxpayer's basis in whole or in part is to be reduced by the lesser of: (7-1-99)

**i.** The amount of the forgiven or discharged indebtedness, minus the total amount of adjustments made under Subsection 210.02.a.; and (7-1-99)

**ii.** The amount of the debtor's total basis of assets before the discharge that exceeds the total preexisting liabilities still remaining after discharge of indebtedness. Basis may not be reduced below a level equal to the remaining undischarged liabilities. (7-1-99)

**03. Exception to Basis Reduction.** The basis reduction under Subsection 210.02.b. is not required if the taxpayer elects to treat the amount that would otherwise be applied in reduction of basis as taxable income of the taxable period in which the debt is forgiven or discharged. (7-1-99)

**04. Discharge Not Treated as Discharged Indebtedness.** The following provisions exclude from this rule indebtedness that is discharged and treat the debtor as if it had originally issued stock instead of debt. No reduction to the Idaho net operating loss or basis is required if one (1) or more of these provisions are satisfied. (7-1-99)

**a.** The indebtedness did not consist of items of a deductible nature and is exchanged for an equity security, other than a limited partnership interest, issued by the debtor or is forgiven as a contribution to capital; or (7-1-99)

**b.** The indebtedness consisted of items of a deductible nature, and the exchange of stock for debt has the same effect as a cash payment equal to the fair market value of the equity security that is issued by the debtor or, if the value of the security is less than the value of the debt, only part of the debt will be excluded. (7-1-99)

**211. -- 249. (RESERVED)****250. NONRESIDENT AND PART-YEAR RESIDENT INDIVIDUALS -- INCOME SUBJECT TO IDAHO TAXATION (RULE 250).**

Sections 63-3026A(1) and (2), Idaho Code

~~**01. Tax on Income From Idaho Sources.** All income earned or received from sources within Idaho is subject to Idaho income taxation. For nonresidents and part-year residents, income from sources within Idaho must be determined in accordance with Section 63-3026A(3), Idaho Code, and Rules 260 through 275 of these rules.~~

(2-27-12)

~~**02. Tax on Income Received by Individuals Residing in or Domiciled in Idaho.** All income earned or received by an individual who resides in or is domiciled in Idaho is subject to Idaho income taxation without regard to the source of the income.~~

(3-20-97)

**03. Receipt of Income -- Part-Year Residents.** For purposes of determining if income is reportable to Idaho by a part-year resident, a cash basis taxpayer is considered to have earned or received income when it is actually or constructively received, except as provided in Subsections 250.04 and 250.05.

(3-30-01)

**04. Receipt of Intangible Income -- Part-Year Residents.**

(3-30-01)

**a.** Interest and dividend income received from a source other than from a pass-through entity is considered to be earned or received by a part-year resident ratably during the taxable year.

(2-27-12)

**b.** If a transaction or activity gives rise to income that is reported in a subsequent year when the taxpayer is a part-year resident, the income must be treated as received ratably during that subsequent year. Subsection 250.04 also applies to income that is not received during the year by the taxpayer, but which must be reported in taxable income. ~~See Subsection 250.05 for the receipt of income from a pass-through entity.~~

(2-27-12)

**c.** A part-year resident must report such income to Idaho in the proportion that the number of days during the taxable year that the individual qualified as an Idaho part-year resident bears to total days in the taxable year.

(2-27-12)

~~**d. Example.** An individual converts an amount from a traditional IRA to a Roth IRA in year one (1). He elects to have the income taxed over four (4) years. The individual moves to Idaho on August 1 of year two (2). Since the individual was an Idaho resident for one hundred fifty-three (153) days of year two (2), he must report as Idaho income forty-two percent (42%) of his income from the conversion to a Roth IRA for that year.~~

(3-30-01)

**05. Receipt of Pass-Through Items of Income and Losses -- Part-Year Residents.**

(3-30-01)

**a.** For a part-year resident who is a shareholder in an S corporation, or a partner in a partnership, the income, gains, losses and other pass-through items from the S corporation or partnership are treated as received ratably during the taxpayer's taxable year. If the taxpayer was not a shareholder or partner for the entire taxable year, the pass-through items are treated as received ratably during the portion of the taxable year the taxpayer was a shareholder of the S corporation or partner of the partnership.

(2-27-12)

**b.** For a part-year resident who is a beneficiary of an estate or trust, the income, gains, losses and other pass-through items from the estate or trust are treated as received ratably during the taxpayer's taxable year. If the taxpayer was not a beneficiary of the estate or trust for the entire taxable year, the pass-through items are treated as received ratably during the portion of the taxable year the taxpayer was a beneficiary of the estate or trust.

(2-27-12)

**c.** A part-year resident must report such income to Idaho in the proportion that the number of days during the taxable year that the individual qualified as an Idaho part-year resident bears to total days in the taxable year.

(2-27-12)

**251. NONRESIDENT AND PART-YEAR RESIDENT INDIVIDUALS -- COMPUTATION OF IDAHO TAXABLE INCOME (RULE 251).**

Section 63-3026A, Idaho Code

~~01. **Idaho Total Income.** To determine the Idaho taxable income of nonresident and part-year resident individuals, first compute the taxpayer's Idaho total income. (3-15-02)~~

~~a. Idaho total income is that portion of total income subject to Idaho taxation. It is the amount reported as total income on Form 43. (3-15-02)~~

~~b. For purposes of this rule, federal total income means gross income less certain deductions allowed under the Internal Revenue Code. It is the amount reported on the federal individual income tax return that is identified as total income. (3-20-14)~~

~~02. **Idaho Adjusted Gross Income.** From Idaho total income, make the applicable adjustments provided in Rule 252 of these rules to arrive at Idaho adjusted gross income. (3-15-02)~~

~~03. **Idaho Adjusted Income.** From Idaho adjusted gross income, make the applicable additions and subtractions set forth in Rules 253 and 254 of these rules to arrive at Idaho adjusted income. (3-20-97)~~

~~04. **Idaho Taxable Income.** From Idaho adjusted income, subtract the exemption and deduction amounts as provided in Rule 255 of these rules to arrive at Idaho taxable income. (3-20-97)~~

**252. NONRESIDENT AND PART-YEAR RESIDENT INDIVIDUALS -- ADJUSTMENTS ALLOWED IN COMPUTING IDAHO ADJUSTED GROSS INCOME (RULE 252).**

Section 63-3026A(6), Idaho Code

**01. In General.** Deductions allowed in computing adjusted gross income will be allowed in computing Idaho adjusted gross income unless specifically denied by Idaho law. The amount allowed will be computed as provided in this rule. Each computation in this rule will include the amounts reported for the taxable year unless otherwise indicated. (3-20-14)

**02. Deductions Directly Related to Specific Items of Income or Property.** If the deduction directly relates to a specific item of income or property, the allowable deduction will be computed by dividing the amount of related income reported in Idaho income by the total of such related income reported in federal income. This percentage is multiplied by the deduction to arrive at the amount allowed as an Idaho deduction. If the deduction is related to property that did not generate income during the taxable year, the deduction will be allowed in the proportion that the property to which the deduction relates was located in Idaho. Examples of some of these deductions include the following: (3-20-14)

**a.** Penalty on early withdrawal of savings. The allowable deduction will be computed by dividing the interest income of the time savings deposit subject to the penalty included in Idaho income by the total interest income of the time savings deposit included in federal income. This percentage is multiplied by the penalty deduction allowed for federal purposes. (3-20-14)

**b.** Certain business expenses of reservists, performing artists, and fee-basis government officials. (3-29-10)

~~**e.** Domestic production activities deduction. The allowable deduction will be computed by dividing the qualified production activities income included in Idaho income by the total qualified production activities income. This percentage is multiplied by the domestic production activities deduction allowed for federal purposes. (3-20-14)~~

**d.** Jury duty pay remitted to an employer. (3-29-10)

**e.** Deductible expenses related to income from the rental of personal property engaged in for profit. (3-29-10)

**f.** Reforestation amortization and expenses. The allowable deduction will be computed by dividing the income from the related timber operations included in Idaho income by the total income from the related timber operations. If there is no income from the related timber operations for the year of the deduction, the allowable deduction will be computed based on the percentage of property in Idaho to total property to which the reforestation amortization and expenses relate. This percentage is multiplied by the reforestation amortization and expense deduction allowed for federal income tax purposes. (3-20-14)

**g.** Repayment of supplemental unemployment benefits. The allowable deduction will be computed by dividing the supplemental unemployment benefits included in Idaho income by the total supplemental unemployment benefits reported in federal income. This percentage is multiplied by the repayment deduction allowed for federal purposes. (3-20-14)

**h.** Attorney fees and court costs. The allowable deduction will be computed by dividing the total income related to the attorney fees and court costs included in Idaho income by the total income from such actions. This percentage is multiplied by the attorney fees and court costs allowed for federal purposes. (3-20-14)

**03. Deductions Allowed Based on Qualifying Types of Income.** If the deduction is dependent on the taxpayer earning a qualifying type of income, the allowable deduction will be computed by dividing the amount of the qualifying income reported in Idaho income by the total of such qualifying income reported. This percentage is multiplied by the deduction to arrive at the amount allowed as an Idaho deduction. (3-20-14)

**a.** Payments to an individual retirement account (IRA), federal health savings or medical savings account, or Section 501(c)(18)(D) retirement plan. The allowable deduction will be computed by dividing the taxpayer's Idaho compensation by the taxpayer's total compensation. This percentage is multiplied by the deduction allowed for federal purposes. For purposes of this rule, compensation means "compensation" as defined in Section 219(f)(1), Internal Revenue Code, and Treasury Regulation Section 1.219-1(c)(1). Idaho compensation is determined pursuant to Rule 270 of these rules. (3-20-14)

**b.** Payments to a Keogh retirement plan, simplified employee pension (SEP) Plan, SIMPLE Plan, self-employment tax, and self-employment health insurance. The allowable deduction will be computed by dividing the taxpayer's self-employment income from Idaho sources by the taxpayer's total self-employment income. This percentage is multiplied by the self-employment deductions allowed for federal purposes. (3-20-14)

**04. Other Deductions.** Deductions that do not relate to specific items of income or to the earning of qualifying income will be allowed in the proportion that Idaho total income bears to federal total income. The federal net operating loss deduction is not included in either the federal total income or the Idaho total income for this calculation. Such deductions include the following: (3-25-16)

- a.** Alimony payments. (3-29-10)
- b.** Moving expenses. (3-29-10)
- c.** Student loan interest payments. (3-29-10)
- d.** Tuition and fees deduction. (3-29-10)

**253. NONRESIDENT AND PART-YEAR RESIDENT INDIVIDUALS -- ADDITIONS REQUIRED IN COMPUTING IDAHO ADJUSTED INCOME.**

Section 63-3026A(6), Idaho Code. The following items must be added to Idaho adjusted gross income in computing the Idaho adjusted income of nonresident and part-year resident individuals. (4-7-11)

**01. Interest and Dividends Not Taxable Pursuant to the Internal Revenue Code.** (3-20-97)

**a.** Part-Year Residents. Interest and dividend income not taxable pursuant to the Internal Revenue Code that was received while residing in or domiciled in Idaho must be added. However, interest received from obligations of the state of Idaho or any political subdivision of Idaho is exempt from Idaho income tax and is not added. (4-7-11)

**b.** Nonresidents. Interest and dividend income reportable from a pass-through entity that was transacting business in Idaho must be added to the extent the income was apportioned or allocated as Idaho income. ~~See Rule 263 of these rules for multistate apportionment rules.~~ (4-7-11)

**02. Net Operating Loss Deduction.** The amount of the net operating loss deduction included in Idaho adjusted gross income must be added. (4-7-11)

**03. Capital Loss.** Capital losses included in Idaho adjusted gross income must be added if the loss was incurred while not residing in and not domiciled in Idaho, or if the loss relates to an activity not taxable by Idaho at the time the loss was incurred. (4-7-11)

**04. Lump Sum Distributions.** Part-year residents must add the taxable amount of a lump sum distribution deducted in calculating taxable income received while residing in or domiciled in Idaho. This includes both the ordinary income portion and the amount eligible for the capital gain election. (4-7-11)

**05. Idaho Medical Savings Account.** An account holder must add the amount of any nonqualified withdrawal from an Idaho medical savings account if the withdrawal was not made for the purpose of paying eligible medical expenses. (4-7-11)

**06. Idaho College Savings Program.** (4-7-11)

**a.** An account owner must add the amount of a nonqualified withdrawal from an Idaho college savings program, less the amount included in the account owner's Idaho adjusted gross income. The addition is limited to contributions previously exempt from Idaho state income tax and earnings generated from the program as long as the earnings are not already included in federal adjusted gross income. Nonqualified withdrawal is defined in Section 33-5401, Idaho Code. (3-26-19)

**b.** As provided in Section 63-3022(p), Idaho Code, an account owner must add the amount of a withdrawal from an Idaho college savings program that is transferred on or after July 1, 2007, to a qualified tuition program operated by a state other than Idaho. For taxable years beginning on or after January 1, 2008, the addback is limited to the total of the amounts contributed to the Idaho college savings program that were deducted on the account owner's Idaho income tax returns for the year of the transfer and the immediately preceding taxable year. (4-7-11)

**07. 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. An individual must add the amount of depreciation computed for federal income tax purposes that exceeds the amount of depreciation computed for Idaho income tax purposes. This addition does not apply to depreciation computed on property acquired after 2007 and before 2010. (3-20-20)

~~**08. Certain Expenses of Eligible Educators.** As provided in Section 63-3022O, Idaho Code, prior to January 1, 2012, the amount of out-of-pocket classroom expenses deducted pursuant to Section 62, Internal Revenue Code, must be added. (4-4-13)~~



**254. NONRESIDENT AND PART-YEAR RESIDENT INDIVIDUALS -- SUBTRACTIONS ALLOWED IN COMPUTING IDAHO ADJUSTED INCOME (RULE 254).**

Section 63-3026A(6), Idaho Code. The following items are allowable subtractions in computing the Idaho adjusted income of nonresident and part-year resident individuals. (2-27-12)

**01. Idaho Net Operating Loss.** 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 to the extent the loss was incurred while the taxpayer was residing in or domiciled in Idaho or to the extent the loss was from activity taking place in Idaho. A net operating loss incurred from an activity not taxable by Idaho may not be subtracted. (2-27-12)

**02. State and Local Income Tax Refunds.** State and local income tax refunds included in Idaho total income may be subtracted unless the refunds have already been subtracted pursuant to Section 63-3022(a), Idaho Code. (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 Idaho total 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 earned by American Indians. An enrolled member of a federally recognized Indian tribe who lives on his tribe's federally recognized Indian reservation is not taxable on income derived within that reservation. ~~See Rule 033 of these rules.~~ (2-27-12)

**d.** Certain income earned by transportation employees covered by Title 49, Sections 11502, 14503 or 40116, United States Code. See Rule 045 of these rules. (7-1-99)

**e.** Certain income from loss recoveries. See Rule 195 of these rules. (3-20-14)

**04. Military Pay.** Qualified military pay included in Idaho total income earned for military service performed outside Idaho may be subtracted. Qualified military pay means all compensation paid by the United States for services performed while on active duty as a full-time member of the United States Armed Forces which full-time duty is or will be continuous and uninterrupted for one hundred twenty (120) consecutive days or more. A nonresident does not include his military pay in Idaho total income and, therefore, makes no adjustment. ~~See Rule 032 of these rules for information regarding the residency status of members of the United States Armed Forces.~~ (2-27-12)

**05. Social Security and Railroad Retirement Benefits.** Social security benefits and benefits paid by the Railroad Retirement Board that are taxable pursuant to the Internal Revenue Code may be subtracted to the extent the benefits are included in Idaho total income. ~~See Subsections 121.04.a. and 121.04.b. of these rules.~~ (2-27-12)

**06. Household and Dependent Care Expenses.** The allowable portion of household and dependent care expenses that meets the requirements of Section 63-3022D, Idaho Code, may be subtracted if incurred to enable the taxpayer to be gainfully employed in Idaho. To determine the allowable portion of household and dependent care expenses, a percentage is calculated by dividing Idaho earned income by total earned income. The qualified expenses are multiplied by the percentage. Earned income is defined in Section 32(c)(2), Internal Revenue Code. (2-27-12)

**07. Insulation and Alternative Energy Device Expenses.** Expenses related to the installation of insulation or alternative energy devices that meet the requirements of Section 63-3022B or 63-3022C, Idaho Code, may be subtracted. (2-27-12)

**08. Deduction for Dependents Sixty-Five or Older or with Developmental Disabilities.** One thousand dollars (\$1,000) may be subtracted for each person who meets the requirements of Section 63-3022E, Idaho Code. The deduction may be claimed for no more than three (3) qualifying dependents. If a dependent has not lived in the maintained household for the entire taxable year, the allowable deduction is eighty-three dollars (\$83) for each month the dependent resided in the maintained household during the taxable year. For purposes of this rule, a fraction of a month exceeding fifteen (15) days is treated as a full month. (2-27-12)

**09. Adoption Expenses.** The allowable portion of adoption expenses that meets the requirements of Section 63-3022I, Idaho Code, may be subtracted. To determine the allowable portion, calculate a percentage ~~is calculated~~ by dividing Idaho total income by total income. The deduction allowable pursuant to Section 63-3022I, Idaho Code, is multiplied by the percentage. (2-27-12)

**10. Capital Gains Deduction.** The Idaho capital gains deduction allowed by Section 63-3022H, Idaho Code, may be subtracted. (2-27-12)

**11. Idaho Medical Savings Account.** (7-1-98)

**a.** The qualifying amount of contributions to an Idaho medical savings account that meets the requirements of Section 63-3022K, Idaho Code, may be subtracted. (2-27-12)

**b.** Interest earned on an Idaho medical savings account may be subtracted to the extent included in Idaho total income. (2-27-12)

**12. 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. (3-20-14)

**13. Worker's Compensation Insurance.** As allowed by Section 63-3022(m), Idaho Code, a self-employed individual may subtract the premiums paid for worker's compensation for coverage in Idaho to the extent not previously subtracted in computing Idaho taxable income. (3-30-01)

**14. Idaho College Savings Program.** The qualifying amount of contributions to a college savings program that meets the requirements of Section 63-3022(n), Idaho Code, may be subtracted. (2-27-12)

**15. 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. To determine the allowable portion of the deduction for certain retirement benefits, a percentage is calculated by dividing the qualified retirement benefits included in Idaho gross income by the qualified retirement benefits included in federal gross income. The deduction allowable pursuant to Section 63-3022A, Idaho Code, and Rule 130 of these rules, is multiplied by the percentage. (2-27-12)

**16. Health Insurance Costs.** The allowable portion of 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, spouse or dependents of the taxpayer not otherwise deducted or accounted for by the taxpayer for Idaho income tax purposes may be subtracted. To determine the allowable portion of the amounts paid for medical care insurance, a percentage is calculated by dividing Idaho total income by total income. The deduction allowable pursuant to Section 63-3022P, Idaho Code, is multiplied by the percentage. ~~See Rule 193 of these rules.~~ (2-27-12)

**17. Long-Term Care Insurance.** As provided in Section 63-3022Q, Idaho Code, a deduction from taxable income is allowed for the allowable portion of 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 that have not otherwise been deducted or accounted for by the taxpayer for Idaho income tax purposes. To determine the allowable

portion, a percentage is calculated by dividing Idaho total income by total income. The deduction allowable pursuant to Section 63-3022Q, Idaho Code, is multiplied by the percentage. ~~See Rule 193 of these rules.~~ (2-27-12)

**18. 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 and before 2010. (3-20-20)

**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)

## **255. NONRESIDENT AND PART-YEAR RESIDENT INDIVIDUALS -- PRORATION OF EXEMPTIONS AND DEDUCTIONS (RULE 255).**

Section 63-3026A(4), Idaho Code

**01. In General.** The exemptions and deductions allowable for federal purposes, except for the deduction of state and local income taxes and the deduction for state and local general sales taxes, are allowed in part in computing Idaho taxable income. To determine the portion of exemptions and deductions allowable for part-year and nonresident individuals, the total exemptions and deductions allowed by Section 151, Internal Revenue Code, and Section 63-3022(j), Idaho Code, are multiplied by the calculated proration. (4-7-11)

**02. Proration.** For taxable years beginning in or after 2007, the proration is calculated by dividing Idaho adjusted income by total adjusted income. Calculate 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). (4-2-08)

**a.** Idaho adjusted income means the Idaho taxable income of the taxpayer as computed pursuant to Title 63, Chapter 30, Idaho Code, except for any adjustments for the standard deduction or itemized deductions and personal exemptions. Total adjusted income means the Idaho taxable income of the taxpayer computed as if he were a resident of Idaho for the entire taxable year, except no adjustments are made for the standard deduction, itemized deductions, personal exemptions, the deduction for active military service pay as provided in Section 63-3022(h), Idaho Code, and any deduction for income earned within a federally recognized Indian reservation. (3-30-01)

**b.** Generally, both Idaho adjusted income and total adjusted income are positive amounts. If Idaho adjusted income is less than or equal to the total adjusted income, the percentage is between zero (0) and one hundred percent (100%). If Idaho adjusted income is greater than the total adjusted income, the percentage is one hundred percent (100%). If Idaho adjusted income is a positive amount and total adjusted income is a negative amount, the percentage is one hundred percent (100%). If Idaho adjusted income is a negative amount and total adjusted income is a positive amount, the percentage is zero (0). (4-7-11)

**03. Standard Deduction for Married Filing Joint Returns.** The proration percentage is applied after making the following calculations for taxable years beginning on or after January 1, 2000. The standard deduction allowed on a married filing joint return is 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. (4-7-11)

**256. -- 259. (RESERVED)**

**~~260. INCOME FROM IDAHO SOURCES (RULE 260).~~**

~~Section 63-3026A(3), Idaho Code. Income from Idaho sources is the gross income, or portion thereof, that is derived from a business, trade, profession, or occupation carried on within Idaho or from any property, trust, estate, or any other source with a situs in Idaho. Income of a nonresident that is derived from property located both within and without Idaho during the taxable year, or from business transactions that occur both within and without Idaho during the taxable year, is attributed to Idaho based on the principles set forth in Rules 261 through 275 of these rules. (3-5-00)~~

**~~261. INCOME FROM ESTATES AND TRUSTS (RULE 261).~~**

~~Section 63-3026A(3), Idaho Code. Income, gain, loss, or deduction of an estate or trust distributed to a nonresident beneficiary is income derived from or related to sources within Idaho if the income, gain, loss or deduction would be Idaho source income pursuant to Section 63-3026A, Idaho Code, if received directly by a nonresident individual. (4-7-11)~~

**262. (RESERVED)**

**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

**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.** (3-20-14)

a. Guaranteed payments to an individual partner up to the amount ~~shown in paragraph 263.04.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. (3-20-14)

b. The amount of guaranteed payments that are sourced as compensation for services ~~is as follows:~~

<del>TAX YEAR</del>	<del>AMOUNT</del>
2019	\$269,500
2018	\$263,000
2017	\$257,500
2016	\$254,250
2015	\$254,000
2014	\$250,000
2013	\$250,000

(3-20-20)

**05. 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)~~

## **264. INCOME FROM REAL AND TANGIBLE PERSONAL PROPERTY (RULE 264).**

Section 63-3026A(3), Idaho Code

**01. In General.** Rents, royalties, profits, gains, losses and other items of income from the ownership or disposition of real or tangible personal property located in Idaho is Idaho source income. (3-20-97)

**02. Property Located Within and Without Idaho.** (3-20-97)

**a.** If the property is located or used within and without Idaho, specific allocation of the income, gain, or loss is appropriate if the gross receipts and related deductions and expenses are readily identifiable from the location or use of the property in Idaho. (3-20-97)

**b.** To the extent income derived from real property located both within and without Idaho cannot be specifically allocated, the rents, profits, gains, losses or other items of income that constitute Idaho source income are determined by multiplying each item of income by a fraction. The numerator of the fraction is the average value of the property located in Idaho and the denominator is the average value of the property located both within and without Idaho. The value of real property is determined by the original cost of the land and improvements. The average value is determined by averaging the values at the beginning and end of the taxable year. However, the Tax Commission may require the averaging of monthly values during the taxable year if required to properly reflect the average value of the taxpayer's property. (3-20-97)

**c.** To the extent income derived from tangible personal property used both within and without Idaho cannot be readily allocated, the rents, royalties, gains, losses, and other items of income that constitute Idaho source income are determined by multiplying each item of income by a fraction. The numerator of the fraction is the total number of days the property was used in Idaho during the taxable year, and the denominator is the total number of days the property was used both within and without Idaho during the taxable year. (3-20-97)

**03. Alternative Method.** If either fraction in Subsection 264.02 does not fairly represent the income derived from the property's use in Idaho, the taxpayer may propose or the Tax Commission may require an alternative method. For example, acres may be a more appropriate measure than average value in some cases. (3-30-01)

**a.** The taxpayer will fully explain the alternative method in a statement attached to his Idaho individual income tax return. (3-20-97)

**b.** The method proposed by the taxpayer may be used in lieu of the method in Subsection 264.02 unless the Tax Commission expressly denies its use. (3-20-97)

## **265. SOLE PROPRIETORSHIPS OPERATING WITHIN AND WITHOUT IDAHO (RULE 265).**

Section 63-3026A(3), Idaho Code

**01. In General.** A sole proprietorship that operates within and without Idaho will apply the principles of allocation and apportionment of income set forth in Section 63-3027, Idaho Code, and related rules to determine the extent of proprietorship income that is derived from or related to Idaho sources. The use of a combined report, however, is available only to C corporations. (3-20-97)

**02. Application of Rule.** This rule also applies to farming activities operated as a sole proprietorship. (3-20-97)

**03. Alternative Method.** If the method described in Subsection 265.01 does not fairly represent the extent of the business activity in Idaho, the taxpayer may propose or the Tax Commission may require an alternative method. (3-30-01)

**a.** The taxpayer will fully explain the alternative method in a statement attached to his Idaho individual income tax return. (7-1-99)

**b.** The method proposed by the taxpayer may be used in lieu of the method in Subsection 265.01 unless the Tax Commission expressly denies its use. (7-1-99)

**266. IDAHO SOURCE INCOME OF NONRESIDENT AND PART-YEAR RESIDENT INDIVIDUALS -- INCOME FROM INTANGIBLE PROPERTY (RULE 266).**  
Section 63-3026A(3), Idaho Code

**01. In General.** Gross income from intangible property generally is sourced to the state of the owner's domicile. The following are exceptions to this rule. (4-11-06)

**a.** If the intangible property is employed in the owner's trade, business or profession carried on within Idaho, any income derived from or related to the property, including gains from the sale thereof, constitutes income from Idaho sources. For example, if a nonresident pledges stocks, bonds or other intangible personal property as security for the payment of indebtedness incurred in connection with the nonresident's Idaho business operations, the intangible property has an Idaho situs and the income derived therefrom constitutes Idaho source income. (7-1-99)

**b.** Interest income from the sale of real or tangible personal property on the installment method is treated as income from the sale of the underlying property and is therefore sourced to Idaho if the underlying property was located in Idaho when sold. (7-1-99)

**c.** Interest income paid by an S corporation to a shareholder or by a partnership to a partner is sourced to Idaho in proportion to the Idaho apportionment factor of the partnership or S corporation. (7-1-99)

**d.** Gains or losses from the sale or other disposition of a partnership interest or stock in an S corporation are sourced to Idaho by using the Idaho apportionment factor for the entity for the taxable year immediately preceding the year of the sale of the interest or stock. However, a gain or loss from the sale of an interest in a publicly traded partnership transacting business in Idaho is Idaho source income to the extent of the gain or loss determined under Section 751, Internal Revenue Code, multiplied by the Idaho apportionment factor of the partnership for the year in which the sale occurred. (2-27-12)

**02. Interest Income Earned on a Bank Account.** (7-1-99)

**a.** Personal Bank Accounts. Interest income earned on a personal bank account is sourced to the owner's state of domicile. A personal bank account is an account that is not used in connection with a business. (7-1-99)

**b.** Business Bank Accounts. If the business is a sole proprietorship, see Rule 265 of these rules. If the business is an S corporation or partnership, see Rule 263 of these rules. (7-1-99)

**03. Payment of Penalties.** Payment of penalties is sourced to Idaho the same as interest income. This includes penalties arising from the prepayment or late payment of an installment contract. If the installment contract is for the sale of Idaho property, any penalty paid is Idaho source income. (2-27-12)

**04. Covenant Not to Compete.** Income from a covenant not to compete is sourced to Idaho based on the Idaho apportionment factor of the entity sold for the taxable year immediately preceding the year of the sale. (2-27-12)

**05. Goodwill.** Gain or loss from the sale of goodwill from a business transacting business in Idaho is sourced to Idaho based on the Idaho apportionment factor of the business sold for the taxable year immediately preceding the year of the sale. (2-27-12)



**06. Timing of Sourcing Determination for Intangible Personal Property.** The source of gains and losses from the sale or other disposition of intangible personal property is determined at the time of the sale or disposition of the property. For example, if an Idaho resident sells intangible personal property under the installment method, and subsequently becomes a nonresident, gain attributable to any installment payment receipts relating to that sale will be sourced to Idaho even though the individual is a nonresident when a payment is received. If the intangible personal property was employed in the owner's business, trade, profession or occupation conducted or carried on in Idaho as described in Paragraph 266.01.a., of this rule, at the time of the sale, any subsequent installment payments is Idaho source income. (2-27-12)

**267. IDAHO SOURCE INCOME OF NONRESIDENT AND PART-YEAR RESIDENT INDIVIDUALS -- PASSIVE ACTIVITY LOSSES (RULE 267).**

Section 63-3026A(6), Idaho Code

**01. In General.** Losses from a passive activity incurred while an individual is a nonresident are included in Idaho taxable income only to the extent the losses were from Idaho activity. (2-27-12)

**02. Idaho Activity.** An activity is an Idaho activity only to the extent the income from that activity would be included in the Idaho taxable income of a nonresident pursuant to Section 63-3026A, Idaho Code. If a passive activity is engaged in both within and without Idaho, the principles of allocation and apportionment of income set forth in Section 63-3027, Idaho Code, and related rules must be applied to determine the extent of Idaho activity. (2-27-12)

**03. Prior Year Losses.** Suspended passive activity losses from prior years included in federal taxable income for the current year are included in Idaho taxable income only to the extent the losses were from Idaho activity. (2-27-12)

**04. Current Year Losses.** Non-Idaho passive activity losses incurred in the current taxable year are included in Idaho taxable income only to the extent the losses were incurred while the individual was an Idaho resident. The portion of the losses incurred while an Idaho resident is determined by prorating the losses based on the proportion of the year the individual resided in Idaho. (2-27-12)

**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. (4-11-15)

**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. (4-11-15)

**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 business 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. (4-11-15)

**c. Nonbusiness Losses.** A suspended nonbusiness loss is from an Idaho source in the year incurred to the extent the loss is allocable to Idaho pursuant to Section 63-3027, Idaho Code and Rule 263.02 of these rules. (4-11-15)

**d. Year Loss Incurred.** For purposes of this rule, "year incurred" means the tax year the loss was first suspended. (4-11-15)

~~e. 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 dollars (\$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 fifty percent (50%) prior year Idaho apportionment factor plus (Forty thousand dollars (\$40,000) current year loss x one hundred percent (100%) current year Idaho apportionment factor). (4-11-15)~~

**02. Losses from Multiple Years.** For purposes of this rule, losses from a pass-through entity are considered used in the order incurred. (4-11-15)

~~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 (\$50,000). 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 one hundred thousand dollar (\$100,000) loss allowed in computing federal taxable income is considered to be forty thousand dollars (\$40,000) of suspended loss from Year 1 and sixty thousand dollars (\$60,000) of suspended loss from Year 2. The amount included in Idaho taxable income is fifty thousand dollars (\$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). (4-11-15)~~

**269. (RESERVED)**

**270. IDAHO SOURCE INCOME OF NONRESIDENT AND PART-YEAR RESIDENT INDIVIDUALS -- IDAHO COMPENSATION -- IN GENERAL (RULE 270).**

Section 63-3026A(3), Idaho Code

**01. In General.** If a nonresident individual performs personal services, either as an employee, agent, independent contractor, partner, or otherwise, both within and without Idaho, the portion of his total compensation that constitutes Idaho source income is determined by multiplying that total compensation by the Idaho compensation percentage. (3-20-14)

**02. Definitions.** (3-20-97)

**a.** The Idaho compensation percentage is the percentage computed by dividing Idaho work days by total work days. (3-20-97)

**b.** The term Idaho work days means the total number of days the taxpayer provided personal services in Idaho for a particular employer or principal during the calendar year. If personal services were provided both within and without Idaho on the same day, that day is an Idaho work day unless the taxpayer establishes that less than fifty percent (50%) of the services were performed within Idaho that day. If an employee works in Idaho part of the day on a regular full-time basis, working hours must be used to determine the amount of Idaho compensation. (2-27-12)

**c.** Total work days means the total number of days the taxpayer provided personal services for that employer or principal both within and without Idaho during the calendar year. For example, a taxpayer working a five (5) day work week may assume total work days of two hundred sixty (260) less any vacation, holidays, sick leave days and other days off. (3-20-97)

**d.** Total compensation means all salary, wages, commissions, contract payments, and other compensation for services, including sick leave pay, holiday pay and vacation pay, that is taxable pursuant to the Internal Revenue Code. (2-27-12)

**03. Work Days.** Work days include only those days the taxpayer actually performs personal services for the benefit of the employer or principal. Vacation days, sick leave days, holidays, and other days off from work are

considered nonwork days whether compensated or not. Total work days must equal Idaho work days plus non-Idaho work days. The taxpayer has the burden of establishing non-Idaho work days. Documentation establishing non-Idaho work days may be required to support the Idaho compensation percentage used by the taxpayer. (3-20-97)

**04. Multiple Employers.** If a taxpayer performs personal services both within and without Idaho for more than one (1) employer or principal, he must determine an Idaho compensation percentage separately for each employer or principal. (2-27-12)

**05. Alternative Method.** If the Idaho compensation percentage does not fairly represent the extent of the taxpayer's personal service activities in Idaho, the taxpayer may propose or the Tax Commission may require an alternative method. For example, working hours may be a more appropriate measure than work days in some cases. (3-30-01)

**a.** The taxpayer must fully explain the alternative method in a statement attached to his Idaho individual income tax return. (2-27-12)

**b.** The alternative method may be used in lieu of the method in Subsection 270.01 unless the Tax Commission expressly denies its use. (4-5-00)

**271. IDAHO COMPENSATION: STOCK OPTIONS (RULE 271).**  
Section 63-3026A(3), Idaho Code

**01. In General.** The granting of stock options is considered to be compensation for services. Although considered as compensation, in some circumstances the taxpayer may report the compensation on his federal income tax return as capital gain income. The character of the income from the granting of stock options and the timing of reporting it for federal income tax purposes apply in computing Idaho taxable income. (4-5-00)

**02. Definitions.** For purposes of this rule: (4-5-00)

**a.** Work days, Idaho work days, and total work days are defined in Rule 270 of these rules. (4-5-00)

**b.** Compensable period means the period that begins at the date the stock option is granted and ends at the earlier of the date the stock option becomes vested or the date the employee's services terminate. (4-5-00)

**c.** Statutory stock options are options governed by specific Internal Revenue Code sections that impose restrictions on both the employer and the employee. Statutory stock options include incentive stock options as provided in Section 422, Internal Revenue Code, and options issued pursuant to employee stock purchase plans as provided in Section 423, Internal Revenue Code. (3-30-01)

**d.** Nonstatutory stock options are options that do not meet the Internal Revenue Code requirements to qualify as statutory stock options or are granted pursuant to a plan or offering that does not qualify. (4-5-00)

**03. Compensation for Future Services.** The granting of stock options will be presumed to be intended as compensation for future services. The party alleging otherwise bears the burden of proving that the stock options were intended for services rendered before the date of grant. (4-5-00)

**04. Statutory Stock Options.** (4-5-00)

**a.** Compensation. Compensation is realized at the date the option is exercised, but not taxable until the income or gain is recognized for federal income tax purposes. If a taxpayer reports a capital gain for federal income tax purposes from statutory stock options, the amount of Idaho source compensation will also be reported as capital gain income for Idaho income tax purposes. Idaho source compensation is determined as follows: (4-5-00)

**i.** Compensation is equal to the portion of the gain that equals the difference between the option price and the fair market value of the stock at the date the option was exercised. Compensation is limited to the gain actually

recognized if the stock is sold for less than its fair market value at the time the option was exercised. No compensation will be reported if the stock is sold at a loss. (4-5-00)

ii. Compensation for services performed in Idaho equals the compensation determined in Subsection 271.04.a.i., multiplied by the ratio of Idaho work days to total work days during the compensable period. (4-5-00)

b. Investment Income. Appreciation in the value of the stock after the date the option was exercised is to be reported as investment income and sourced to the taxpayer's domicile at the date the stock was sold. (4-5-00)

**05. Nonstatutory Stock Options.** (4-5-00)

a. Compensation. Compensation is recognized at the date the stock option is exercised. The amount of Idaho source compensation related to the stock option is determined as follows: (4-5-00)

i. Compensation for federal income tax purposes is equal to the difference between the option price and the fair market value of the stock at the date the option was exercised. (4-5-00)

ii. Compensation for services performed in Idaho equals the compensation determined in Subsection 271.05.a.i., multiplied by the ratio of Idaho work days to total work days during the compensable period. (4-5-00)

b. Investment Income. Appreciation or depreciation in the value of the stock after the date the option was exercised is to be reported as investment income and sourced to the taxpayer's domicile at the date the stock was sold. (4-5-00)

**272. IDAHO COMPENSATION: SEVERANCE PAY (RULE 272).**

Section 63-3026A(3), Idaho Code

**01. In General.** In accordance with federal Treasury Regulation Section 1.61-2, termination or severance pay is treated as compensation for services. The amount of termination or severance pay received by a nonresident that is subject to Idaho income tax is determined pursuant to this rule. (3-15-02)

**02. Definitions.** For purposes of this rule work days, Idaho work days and total work days are defined in Rule 270 of these rules. (3-15-02)

**03. Calculation of Idaho Source Severance Pay.** The amount of severance pay that is Idaho source income is to be equal to the severance pay received during the taxable year multiplied by the ratio of Idaho work days to total work days during either of the following: (3-15-02)

a. The employee's entire period of employment with such employer; or (3-15-02)

b. The employee's last twelve (12) months of employment with such employer. (3-15-02)

**04. Alternative Method.** If the Idaho compensation percentage computed in Subsection 272.03 does not fairly represent the extent of the taxpayer's personal service activities in Idaho, the taxpayer may propose or the Tax Commission may require an alternative method. For example, working hours may be a more appropriate measure than work days in some cases. (3-15-02)

a. The taxpayer will fully explain the alternative method in a statement attached to his Idaho individual income tax return. (3-15-02)

b. The alternative method may be used in lieu of the method in Subsection 272.03 unless the Tax Commission expressly denies its use. (3-15-02)

**273. IDAHO COMPENSATION: UNEMPLOYMENT COMPENSATION (RULE 273).**

Section 63-3026A(3), Idaho Code. Unemployment compensation benefits are Idaho source income if the benefits are received by the taxpayer from the state of Idaho, even though the benefits may relate to wages earned in Idaho and

another state. Unemployment compensation benefits received from another state does not constitute Idaho source income even though the calculation of the benefits may be based in part on wages earned in Idaho. (3-29-10)

**274. (RESERVED)**

**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. (2-27-12)

**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)

~~e. 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 fifty percent (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 fifty percent (50%) of A's distributive share of ABC's gain from the sale of non-Idaho real property (which is business income under the facts of this example) and fifty percent (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. (4-11-15)~~

**276. -- 279. (RESERVED)**

**280. PARTNERSHIPS OPERATING WITHIN AND WITHOUT IDAHO (RULE 280).**

Sections 63-3026A(3), 63-3027 and 63-3030(a)(9), Idaho Code

**01. In General.** A partnership that operates within and without Idaho must apply the principles of allocation and apportionment of income set forth in Section 63-3027, Idaho Code, and related rules to determine the extent of partnership income that is derived from or related to Idaho sources. The use of a combined report, however, is available only to C corporations. (4-5-00)

**02. Exceptions to Apportionment Formula.** If the method described in Subsection 280.01 does not fairly represent the extent of the business activity in Idaho, the partnership may file a request to use, or the Tax Commission may require, an alternative method, including the following: (3-30-07)

- a. Separate accounting as provided in Rule 585 of these rules; (3-30-07)
- b. The exclusion of a factor pursuant to Rule 590 of these rules; (3-30-07)
- c. An additional factor or substitute factor pursuant to Rule 595 of these rules; or (3-30-07)
- d. The employment of any other method that would fairly represent the extent of business activity in Idaho. (3-30-07)

**03. Information Provided to Partners.** The partnership must provide to each partner information necessary for the partner to compute his Idaho income tax. Such information must include: (4-5-00)

- a. The partner's share of each pass-through item of income and deduction; (4-7-11)
- b. The partner's share of each Idaho addition and subtraction; (4-7-11)
- c. The partner's share of Idaho qualifying contributions, Idaho tax credits, and tax credit recapture; (4-7-11)
- d. The partner's share of income allocated to Idaho; (4-7-11)
- e. The partnership's apportionment factor, and if the partner is not an individual, the partnership's property, payroll and sales factor numerator and denominator amounts, including the amount of capitalized rent expense; and (4-7-11)

f. The partner's distributive share of partnership gross income if the partner is an individual, trust, or estate. (4-7-11)

**281. -- 284. (RESERVED)**

**285. S CORPORATIONS (RULE 285).**

Sections 63-3025 and 63-3025A, Idaho Code

~~**01. Tax on S Corporations.** An S corporation that is transacting business in Idaho or authorized to transact business in Idaho is subject to the tax imposed by Section 63-3025, Idaho Code, if not paying the tax imposed by Section 63-3025A, Idaho Code. The tax imposed by Section 63-3025 or 63-3025A, Idaho Code, is computed on the total of the net recognized built-in gains and the excess net passive income of the S corporation attributable to Idaho for the taxable year. (4-2-08)~~

~~a. Net recognized built-in gains is to be determined pursuant to Section 1374, Internal Revenue Code, including any applicable limitations. (4-2-08)~~

~~b. Excess net passive income is determined pursuant to Section 1375, Internal Revenue Code, including any applicable limitations. (4-2-08)~~

~~c. If the tax computed in Subsection 285.01 of this rule is less than the minimum tax, the S corporation pays the minimum tax. (4-2-08)~~

**02. Minimum Tax.** The minimum tax is required of every S corporation that is required to file a return. A name-holder or inactive S corporation that is authorized to do business in Idaho pays the minimum tax of twenty dollars (\$20) even though the S corporation did not conduct Idaho business activity during the taxable year. ~~A nonproductive mining corporation generally is not required to pay the minimum tax. See Subsection 285.03 of this rule. (4-2-08)~~

**03. Nonproductive Mining Corporations.** A nonproductive mining corporation is a corporation that does not own any producing mines and does not engage in any business other than mining. An S corporation that qualifies as a nonproductive mining corporation is required to file and pay tax if it receives any other income. (4-2-08)

**04. Application of Credits.** If an S corporation was previously a C corporation with an Idaho income tax credit carryover at the time of the S corporation election, the S corporation may use any available credit carryover against the tax on the excess net passive income or net recognized built-in gains if the carryover period related to the Idaho income tax credit has not expired before the taxable year in which the tax must be reported. (4-2-08)

**05. Tax Resulting From the Requirements of Section 63-3022L, Idaho Code.** An S corporation is subject to tax at the corporate rate on the income required to be reported for qualifying shareholders under Section 63-3022L, Idaho Code. This tax is in addition to any tax the S corporation owes under Section 63-3025 or 63-3025A, Idaho Code. See Rule 291 of these rules for additional information. (4-4-13)

**06. Qualified Subchapter S Subsidiary.** A corporation that is a qualified subchapter S subsidiary (QSSS) will be treated for Idaho income tax purposes the same as treated for federal income tax purposes. The QSSS will not be treated as a separate corporation, but all the assets, liabilities, and items of income, deduction, and credit of a QSSS will be treated as assets, liabilities and such items of the S corporation. Since the QSSS is not treated as a separate taxpayer, it is not subject to the minimum tax. (4-2-08)

**286. S CORPORATIONS OPERATING WITHIN AND WITHOUT IDAHO (RULE 286).**

Sections 63-3027 and 63-3030(a)(4), Idaho Code

**01. In General.** An S corporation that operates within and without Idaho must apply the principles of allocation and apportionment of income set forth in Section 63-3027, Idaho Code, and related rules to determine the



extent of S corporation income that is derived from or related to Idaho sources. The use of a combined report, however, is available only to C corporations. (4-2-08)

~~**02. Exceptions to Apportionment Formula.** If the method described in Subsection 286.01 of this rule does not fairly represent the extent of the business activity in Idaho, the S corporation may file a request to use or the Tax Commission may require an alternative method, including the following: (4-2-08)~~

- ~~a. Separate accounting as provided in Rule 585 of these rules; (4-2-08)~~
- ~~b. The exclusion of a factor pursuant to Rule 590 of these rules; (4-2-08)~~
- ~~c. An additional factor or substitute factor pursuant to Rule 595 of these rules; or (4-2-08)~~
- ~~d. The employment of any other method that would fairly represent the extent of business activity in Idaho. (4-2-08)~~

**03. Information Provided to Shareholders.** An S corporation must provide to each shareholder information necessary for the shareholder to compute his Idaho income tax. Such information must include: (4-2-08)

- a. The shareholder's share of each pass-through item of income and deduction; (4-7-11)
- b. The shareholder's share of each Idaho addition and subtraction; (4-7-11)
- c. The shareholder's share of Idaho qualifying contributions, Idaho tax credits, and tax credit recapture; (4-7-11)
- d. The shareholder's share of income allocated to Idaho; (4-7-11)
- e. The S corporation's apportionment factor; and (4-7-11)
- f. The shareholder's distributive share of S corporation gross income. (4-7-11)

**04. Protection Under Public Law 86-272.** An S corporation whose Idaho business activities fall under the protection of Public Law 86-272 is exempt from the taxes imposed by Sections 63-3025 and 63-3025A, Idaho Code, including the minimum tax. (4-2-08)

**05. Qualified Subchapter S Subsidiary.** A corporation that is a qualified subchapter S subsidiary (QSSS) must include its apportionment attributes with its parent's apportionment attributes to compute one Idaho apportionment factor for the S corporation. If the S corporation and its qualified subchapter S subsidiaries are carrying on more than one unitary business, each unitary business must allocate and apportion its income pursuant to Rule 340.03. (4-4-13)

**287. -- 290. (RESERVED)**

**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 (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, unless otherwise disallowed under this rule. These include but are not limited to: (3-25-16)

i. Section 179, Internal Revenue Code, deduction; (3-25-16)

ii. Charitable contributions made by the pass-through entity; (3-25-16)

iii. Investment interest expense; (3-25-16)

iv. Section 59(e)(2), Internal Revenue Code, expenditures (qualified research expenditures); (3-25-16)

- v. Amounts paid for medical insurance; (3-25-16)
- vi. Educational assistance benefits; (3-25-16)
- vii. Payments to a pension or IRA. (3-25-16)

**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)

**292. -- 299. (RESERVED)**

**300. TAX ON CORPORATIONS (RULE 300).**

Sections 63-3025 and 63-3025A, Idaho Code

~~**01. Excise Tax.** A corporation excluded from the tax on corporate income imposed by Section 63-3025, Idaho Code, is subject to the excise tax imposed by Section 63-3025A, Idaho Code. If a corporation is subject to the excise tax imposed by Section 63-3025A, Idaho Code, it is not subject to the tax on corporate income imposed by Section 63-3025, Idaho Code. (3-20-97)~~

~~**02. Minimum Tax.** A name holder or inactive corporation that is authorized to do business in Idaho pays the minimum tax of twenty dollars (\$20) even though the corporation did not conduct Idaho business activity during the taxable year. A nonproductive mining corporation generally is not required to pay the minimum tax. See Subsection 300.03. (3-20-97)~~

~~**03. Nonproductive Mining Corporations.** A nonproductive mining corporation is a corporation that does not own any producing mines and does not engage in any business other than mining. A corporation that qualifies as a nonproductive mining corporation is required to file and pay tax if it receives any other income. (3-20-97)~~

~~**04. Protection Under Public Law 86-272.** A corporation whose Idaho business activities fall under the protection of Public Law 86-272 is exempt from the taxes imposed by Sections 63-3025 and 63-3025A, Idaho Code, including the minimum tax. (3-30-07)~~

**05. Corporate Income Tax Rates.**

PERIOD	TAX RATE
2018 and after	6.925%
2012-2017	7.4%
2001-2011	7.6%

(3-26-19)

**301. -- 309. (RESERVED)**

**647. -- 699. (RESERVED)****700. CREDIT FOR INCOME TAXES PAID ANOTHER STATE OR TERRITORY: IN GENERAL (RULE 700).**

Section 63-3029, Idaho Code

~~**01. Taxpayers Entitled to the Credit.** The credit for taxes paid to another state is to be allowed to qualifying individuals, estates, and trusts. (3-29-10)~~

~~**a.** The credit is allowed to resident individuals who are domiciled in Idaho at the time the income was earned in another state. (5-8-09)~~

~~**b.** The credit is allowed to part-year resident individuals who were domiciled or residing in Idaho at the time the income was earned in another state. (5-8-09)~~

~~**c.** The credit is allowed to an estate or trust that is an Idaho resident at the time the income was earned in another state. (3-29-10)~~

~~**d.** Income earned in another state is to be determined under Section 63-3026A, Idaho Code, and related rules. (5-8-09)~~

~~**02. Taxes Eligible for the Credit.** The credit for taxes paid to another state is allowed for the amount of income tax imposed by another state on a qualifying individual, an S corporation, partnership, limited liability company, estate, or trust of which the individual is a shareholder, partner, member or beneficiary. For taxes paid to another state by a pass-through entity, the credit is allowed to the extent the tax is attributable to the individual as a result of his share of the entity's taxable income in another state. (3-29-10)~~

**03. Taxes Not Eligible for the Credit.** If any tax or portion thereof is imposed on capital stock, retained earnings, stock values, or a basis other than income, the tax is not eligible for the credit. The credit is not allowed for income taxes imposed by another state on income not taxed by Idaho. (3-29-10)

**04. Credit Calculated on a State-by-State Basis.** The credit and credit limitations are to be calculated on a state-by-state basis. The taxpayer may not aggregate the income taxed by other states or the taxes paid to the other states for purposes of calculating the credit and its limitations. (7-1-98)

**05. Income Tax Payable to Another State.** The income tax payable to another state is to be the tax paid after the application of all credits. The tax paid to the other state must be for the same taxable year that the credit is claimed. Tax paid to cities or counties does not qualify for the credit. (3-30-07)

**06. Limitations.** The credit for taxes paid to another state is limited as follows: (3-30-07)

**a.** The credit allowed may not exceed the amount of tax actually paid to the other state. This includes the amount paid by a qualifying individual and the amount paid for such individual by an S corporation, partnership, limited liability company, estate, or trust. (3-29-10)

**b.** If an individual receives a refund due to a refundable credit for all or part of the income tax paid by the pass-through entity, the amount of the refund attributable to the refundable credit reduces the income tax paid by the pass-through entity. ~~For example, an individual domiciled in Idaho is required to pay tax in another state due to his interest in an S corporation operating in that state. In addition to the individual's tax paid to the other state, the S corporation is required to pay an income tax to that state, of which four hundred dollars (\$400) is attributable to the Idaho resident. The individual's income tax to the other state totals three hundred dollars (\$300), but he is entitled to a three hundred sixty dollar (\$360) refundable corporate tax credit due to his share of the tax paid by the pass-through entity, resulting in a net refund of sixty dollars (\$60). In computing the tax actually paid to the other state, the tax paid by the pass-through entity must be reduced by the net refund received by the individual (\$400 - \$60 = \$340). The credit for tax paid to the other state is limited to three hundred forty dollars (\$340).~~ (3-30-07)

**c.** The credit may not exceed the proportion of the tax otherwise due to Idaho that the adjusted gross income of the individual derived from sources in the other state as modified by Chapter 30, Title 63, Idaho Code, bears to total adjusted gross income for the individual so modified. (3-29-10)

~~i. For example, if the adjusted gross income derived in another state is twelve thousand dollars (\$12,000) after taking into account the Idaho additions and subtractions required by the Idaho Income Tax Act, and the individual's total adjusted gross income similarly modified equals fifty thousand dollars (\$50,000), the credit cannot exceed twenty-four percent (24%) of the tax paid to Idaho ( $\$12,000/\$50,000 = 24\% \times \text{tax paid to Idaho}$ ).~~ (3-29-10)

~~ii. Sec Rule 701 of these rules for information related to part-year residents.~~ (3-29-10)

**d.** The credit allowed to an estate or trust may not exceed the proportion of the tax otherwise due to Idaho that the federal total income of the estate or trust derived from sources in the other state and taxed by that state bears to the federal total income of the estate or trust. (3-29-10)

**i.** Federal total income of the estate or trust derived from sources in the other state is to be determined using the Idaho sourcing rules applicable to nonresidents found in Section 63-3026A, Idaho Code and related rules. Income derived from the ownership or disposition of any interest in real or tangible personal property located in the other state is to be considered to be income derived from sources in the other state. Interest income earned on a bank account generally would not be income derived from sources in the other state as provided in Rule 266 of these rules. (3-29-10)

~~ii. For example, if a trust sells Oregon property at a gain of thirty-six thousand dollars (\$36,000), which is the only income derived from sources in the other state, and the trust's federal total income is ninety thousand dollars (\$90,000), the credit cannot exceed forty percent (40%) of the tax paid to Idaho ( $\$36,000/\$90,000 = 40\% \times \text{tax paid to Idaho}$ ).~~ (3-29-10)

**07. Rounding.** ~~For taxable years beginning in or after 2007, the proration calculated under Section 63-3029, Idaho Code, is to 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).~~ (4-2-08)

**~~701. CREDIT FOR INCOME TAXES PAID ANOTHER STATE OR TERRITORY: PART YEAR RESIDENTS (RULE 701).~~**

~~Section 63-3029, Idaho Code~~

**~~01. Income Subject to Tax by Both States.~~** (3-29-10)

~~**a. Individuals.** For purposes of the credit for income taxes paid to another state, income subject to tax by both states means the total amount of income an individual receives from sources outside of Idaho during the portion of the year he is domiciled or residing in Idaho. Income received during the portion of the year when the individual was not domiciled or residing in Idaho does not qualify.~~ (3-29-10)

~~**b. Estates and Trusts.** If an estate or trust is determined to be a part-year resident, income subject to tax by both states means the total amount of income the estate or trust receives from sources outside of Idaho during the portion of the year the estate or trust is a resident of Idaho. Income received during the portion of the year when the estate or trust was not a resident of Idaho does not qualify.~~ (3-29-10)

~~**c.** Both the source state and Idaho must impose an income tax on the income for the income to be subject to tax by both states.~~ (3-29-10)

**02. Ex~~amples~~.** ~~The following examples assume the taxpayer earned only wage income. (3-30-07)~~

**a.** ~~Taxpayer A was domiciled in California and worked in that state from January through June. In July he moved to Idaho and changed his domicile from California to Idaho. He worked in Idaho the rest of the year. California will tax only the wages earned in California and Idaho will tax only the wages earned in Idaho. Because no income is subject to tax by both states, no credit for income taxes paid another state is allowed. (3-30-07)~~

**b.** ~~Taxpayer B was domiciled in Oregon from January through June. On July 1 he moved to Idaho and changed his domicile from Oregon to Idaho. He resided in Idaho the rest of the year. He worked in Oregon for the same employer the entire year. Oregon will tax all the wages earned during the year since they were earned in Oregon. Idaho will tax only the wages he earned in Oregon while residing in Idaho. As a result, only one-half (6 months / 12 months = 1/2) of his wages qualify for credit purposes as being subject to tax by both Idaho and Oregon. (3-30-07)~~

**c.** ~~Taxpayer C was domiciled in California. He resided and worked in California from January through June. On July 1 he moved to Idaho, but did not change his domicile to Idaho as he intended to return to his home in California once his job assignment in Idaho was completed. California will tax all his income earned during the year since he is domiciled in California. Idaho will tax only the income he earned while residing in Idaho. Taxpayer C will not receive a credit for income taxes paid to California on his Idaho wages because this income is not earned in another state. If Taxpayer C received other income while residing in Idaho that is taxed by Idaho but sourced to another state, such as gains on the sale of stock, he may be entitled to a credit for taxes paid on this income. (5-8-09)~~

**702. -- 704. (RESERVED)**

## **705. CREDIT FOR CONTRIBUTIONS TO EDUCATIONAL INSTITUTIONS FOR TAXABLE YEARS BEGINNING AFTER 2010 (RULE 705).**

Section 63-3029A, Idaho Code

**01. ~~Qualified Contributions.~~** ~~Contributions must be made in cash or in another monetary form during the taxable year the credit is claimed. Unpaid pledges, goods, or services provided do not qualify as contributions. Tuition, room and board, student fees, and similar charges are not contributions. (2-27-12)~~

**02. ~~Limitations - Individuals.~~** ~~The credit allowed to an individual is fifty percent (50%) of the amount contributed limited to the lesser of: (3-20-97)~~

**a.** ~~Fifty percent (50%) of the individual's total income tax liability; or (2-27-12)~~

**b.** ~~Five hundred dollars (\$500) if filing a return other than a joint return or one thousand dollars (\$1,000) if filing a joint return. (2-27-12)~~

**03. ~~Limitations - Corporations.~~** ~~The credit allowed to a corporation is fifty percent (50%) of the amount contributed limited to the lesser of: (3-20-97)~~

**a.** ~~Ten percent (10%) of the corporation's total income tax liability; or (2-27-12)~~

**b.** ~~Five thousand dollars (\$5,000). (2-27-12)~~

**04. ~~Pass-Through Entities.~~** ~~The credit may be earned by a partnership, S corporation, estate or trust and passed through to the partner, shareholder, or beneficiary. For pass-through entities paying tax and the application of limitations on pass-through credits, see Rule 785 of these rules. (3-15-02)~~

**05. ~~Other Limitations.~~** (3-15-02)

**a.** ~~This credit is further limited if the credit for qualifying new employees is claimed. (3-15-02)~~

**b.** ~~This credit plus other nonrefundable credits may not reduce the taxpayer's tax liability below zero (0). See Rule 799 of these rules for the priority of credits. (3-15-02)~~

**06. Effect on Itemized Deductions.** The credit allowed does not reduce the amount of charitable contributions that may be included in itemized deductions. (3-20-97)

**07. Nonprofit Public and Private Museums.** To qualify as a museum pursuant to Section 63-3029A, Idaho Code, the public or private nonprofit institution must be organized for the purpose of collecting, preserving, and displaying objects of aesthetic, educational, or scientific value and must be open to the general public on a regular basis. (3-20-97)

**706. -- 709. (RESERVED)**

**710. IDAHO INVESTMENT TAX CREDIT: IN GENERAL (RULE 710).**

Section 63-3029B, Idaho Code

**01. Credit Allowed.** The investment tax credit allowed by Section 63-3029B, Idaho Code, applies to investments made during tax years beginning on and after January 1, 1982, that qualify pursuant to Sections 46(c), 47, and 48, Internal Revenue Code, as in effect prior to amendment by Public Law 101-508. Investments must also meet the requirements of Section 63-3029B, Idaho Code, and Rules 710 through 719 of these rules. (5-8-09)

**02. Limitations.** The investment tax credit allowable in any taxable year will be limited by the following: (3-20-14)

**a. Tax liability.** (3-30-01)

i. For taxable years beginning on or after January 1, 2000, the credit claimed may not exceed fifty percent (50%) of the tax after credit for taxes paid another state. (3-30-01)

ii. For taxable years beginning on or after January 1, 1995 and before January 1, 2000, the credit claimed may not exceed forty-five percent (45%) of the tax after credit for taxes paid another state. (3-30-01)

**b. Credit for qualifying new employees.** If the credit for qualifying new employees is claimed in the current taxable year or carried forward to a future taxable year, the investment tax credit is limited by the provisions of Section 63-3029F, Idaho Code. (3-30-01)

**c. Unitary taxpayers.** Limitations apply to each taxpayer according to its own tax liability. Each corporation in a unitary group is a separate taxpayer. See Rule 711 of these rules. (3-30-01)

**d. Nonrefundable credits.** The investment tax credit is a nonrefundable credit. It is applied to the income tax liability in the priority order for nonrefundable credits described in Rule 799 of these rules. (3-15-02)

**e. Used Property Limitation.** The term used property limitation means the one hundred fifty thousand dollar (\$150,000) limitation imposed by Section 48, Internal Revenue Code of 1986 prior to November 5, 1990. (4-4-13)

**03. Carryovers.** (3-20-97)

**a. Investment tax credit earned on investments made on or after January 1, 1990, but not claimed against tax in the year earned is eligible for a seven (7) year carryover. If a credit carryover from these years is available to be carried into taxable years beginning on or after January 1, 2000, the credit carryover is extended from seven (7) years to fourteen (14) years.** (3-30-01)

~~**b. For example, a calendar year taxpayer earned investment tax credit in calendar year 1993. The taxpayer was unable to use all the credit in that year and in the subsequent carryover years. Carryover was remaining into the seventh and final carryover year, calendar year 2000. Since the taxpayer had eligible carryover going into a taxable year beginning on or after January 1, 2000, the carryover period changes from seven (7) years to fourteen (14) years. Assuming the carryover is available for the entire carryover period, and that there are no short period years, the**~~



~~last year that the carryover can be used will be calendar year 2007. If the seventh carryover year was a taxable year beginning prior to January 1, 2000, the carryover period has expired and is not extended.~~ (3-30-01)

**c.** Investment tax credit earned on investments made in taxable years beginning on or after January 1, 2000, but not claimed against tax in the year earned is eligible for a fourteen (14) year carryover. (3-30-01)

**04. Motor Vehicle.** Motor vehicle means a self-propelled vehicle that is registered or may be registered for highway use pursuant to the laws of Idaho. Gross vehicle weight is determined by the manufacturer's specified gross vehicle weight. (3-20-97)

**05. Expensed Property.** The cost of property that the taxpayer elects to expense pursuant to Section 179, Internal Revenue Code, is not a qualified investment. (3-30-01)

**06. Bonus Depreciation.** The cost of property that the taxpayer elects to deduct as bonus first-year depreciation pursuant to Section 168(k), Internal Revenue Code, is not a qualified investment when the bonus first-year depreciation was also allowed in computing depreciation for Idaho. (3-20-14)

**711. IDAHO INVESTMENT TAX CREDIT: TAXPAYERS ENTITLED TO THE CREDIT (RULE 711).**  
Section 63-3029B, Idaho Code

**01. Unitary Taxpayers.** A corporation included as a member of a unitary group may elect to share the investment tax credit it earns but does not use with other members of the unitary group. Before the corporation may share the credit, it must claim the investment tax credit to the extent allowable against its tax liability. (2-27-12)

**a.** The credit available to be shared is the amount of investment tax credit carryover and credit earned for the taxable year that exceeds the limitation provided in Section 63-3029B(4), Idaho Code. The limitation is applied against the tax computed for the corporation that claims the credit. Credit shared with another member of the unitary group reduces the carryforward. (2-27-12)

**b.** In the taxable year when a corporation that earned the investment tax credit is acquired or disposed of, only a portion of the tax of the other members of the unitary group may be offset with shared investment tax credit from that corporation. To determine the allowable portion of the tax, a percentage is calculated by dividing the number of days that the corporation that earned the investment tax credit is included in the unitary group's taxable year by the total number of days in the taxable year. The tax for each member with an Idaho filing requirement is multiplied by the percentage. The result is the amount of tax that can be offset with a share of the credit, subject to other limitations imposed by law or related rules. (2-27-12)

**02. Conversion of C Corporation to S Corporation.** (3-20-97)

**a.** An investment tax credit carryover earned by a C corporation that has converted to an S corporation is allowed against the S corporation's tax on net recognized built-in gains and excess net passive income. The credit is allowed against this tax until the carryover period has expired. The credit is not allowed against the tax computed pursuant to Section 63-3022L, Idaho Code. In addition, the credit may not be passed through to the S corporation shareholders. (2-27-12)

**b.** The election to file as an S corporation does not cause recapture of investment tax credit. However, the S corporation is liable for any recapture of credit originally claimed by the C corporation as provided by Rule 715 of these rules. (3-20-97)

**03. Agricultural Cooperatives.** The portion of the investment tax credit earned by an agricultural cooperative that it cannot use for the taxable year is to be allocated to the members of the cooperative. If qualifying property is disposed of or ceases to qualify prior to the close of its estimated useful life, the recapture of credit as provided by Rule 715 of these rules applies as though the cooperative did not allocate any of the original credit to the members. (3-20-97)

**a.** ~~The distribution to members is made as provided in Rule 785 of these rules.~~ (3-15-02)

**b.** The investment tax credits claimed by the agricultural cooperative and its members may not be more than one hundred percent (100%) of the credit earned. (3-20-97)

**04. Leased Property.** Generally the credit for qualified investments in leased property is claimed by the lessor. A lessee may claim the investment tax credit on leased property only as provided in Paragraphs 711.04.a. and 711.04.b. of this rule. (3-29-10)

**a.** If the lessor elected to pass the investment tax credit to the lessee and filed the federal election pursuant to the Internal Revenue Code and Treasury Regulations prior to the 1986 Tax Reform Act, the investment tax credit is to be claimed by the lessee. Both parties must attach the original election and a schedule identifying the qualifying property. (3-20-97)

**b.** If a taxpayer is a lessee in a conditional sales contract, he is entitled to the investment tax credit on any qualifying property subject to the contract since the lessee is considered the purchaser of the property. (3-20-97)

**712. -- 713. (RESERVED)**

**714. IDAHO INVESTMENT TAX CREDIT: CREDIT EARNED ON PROPERTY USED BOTH IN AND OUTSIDE IDAHO IN TAXABLE YEARS BEGINNING ON OR AFTER JANUARY 1, 1995 (RULE 714).**  
Section 63-3029B, Idaho Code

**01. In General.** Property must be used at least part of the time in Idaho to qualify for the investment tax credit, provided it otherwise qualifies for the credit. It must also be used in Idaho in each taxable year during the recapture period. (3-20-14)

**02. Election of Methods.** The taxpayer must elect to compute the investment tax credit on property used both in and outside Idaho using either the percentage-of-use method or the amount of that property correctly included in the Idaho property factor numerator. The credit for all property used both in and outside Idaho must be computed using the method elected. (4-2-08)

**a. Percentage-of-Use Method.** If the percentage-of-use method is elected, the basis of each qualified asset is multiplied by the percentage of time, miles, or other measure that accurately reflects the use of that asset in Idaho. The use of aircraft within and without Idaho during the taxable year will be determined by the ratio of departures from locations in Idaho to total departures. (3-20-14)

**b. Property Factor Method.** If the property factor numerator option is elected, the qualified investment is the basis of the asset correctly included in the numerator of the Idaho property factor for the year the credit is earned. (4-4-13)

**i.** The amounts of investment tax credit computed under the percentage-of-use method and the property factor numerator option are generally the same. Differences may result when a taxpayer uses certain MTC special industry regulations that allow the taxpayer to vary from using the percentage-of-use method for determining the Idaho numerator for each item of mobile property, and instead allow another method, such as the ratio of mobile property miles in the state compared to total mobile property miles or the ratio of departures of aircraft from locations in the state compared to total departures. These special industry regulations include the regulations for airlines, railroads, and trucking companies. See Rule 580 of these rules for a list of the special industries. (4-2-08)

**ii.** "Correctly included in the numerator of the Idaho property factor" means that the amount included in the Idaho property factor numerator was correctly computed using Section 63-3027, Idaho Code, and related rules including any MTC special industry regulations that apply to the taxpayer. If the amount included in the Idaho property factor numerator exceeds the amount that should have been included using Section 63-3027, Idaho Code and related rules, the investment tax credit will be allowed only on the amount that reflects the correct calculation for purposes of computing the Idaho property factor numerator. For example, a taxpayer includes one hundred percent (100%) of the basis of an asset in the Idaho property factor numerator, but the amount correctly computed under Section 63-3027, Idaho Code, should have been fifty percent (50%) of the basis of the asset. The investment tax credit will be allowed only on the fifty percent (50%) of the basis of the asset. (3-20-14)

**03. Order of Limitations.** The qualified investment in property used both in and outside Idaho is determined by first applying the rules of this section and then the used property limitations outlined in Rule 710. (4-4-13)

**04. Examples.**  (4-4-13)

**a. Idaho Percentage-of-Use Method.** ~~In January 2009, a calendar year corporation purchased a road grader for fifty thousand dollars (\$50,000). Thirty percent (30%) of its hours were logged in Idaho during the year. No other qualified investments were made during 2009. The taxpayer elected to compute the credit using the percentage-of-use method. The taxpayer has a fifteen thousand dollar (\$15,000) qualified investment computed by multiplying thirty percent (30%) by fifty thousand dollars (\$50,000). The investment tax credit is computed at three percent (3%) of fifteen thousand dollars (\$15,000) for a credit of four hundred fifty dollars (\$450).~~ (4-4-13)

**b. Idaho Percentage-of-Use Method -- Assets placed in service within ninety (90) days of year end.** ~~A calendar year taxpayer elects the percentage-of-use method for a road grader placed in service on March 1, 2011, with a basis of seventy-five thousand dollars (\$75,000). If eighty percent (80%) of the road grader's hours were logged in Idaho measured between March 1 and December 31, 2011, the qualifying investment in the road grader is sixty thousand dollars (\$60,000) computed at eighty percent (80%) of the asset's basis. If the road grader was placed in service by the same calendar year taxpayer on November 1, 2011, the Idaho qualifying property is measured during the first ninety (90) days of use of the asset. If the percentage of hours logged in Idaho between November 1, 2011, and January 31, 2012, is seventy percent (70%), the qualifying investment in the road grader is fifty-two thousand five hundred dollars (\$52,500) computed at seventy percent (70%) of the asset's basis.~~ (4-4-13)

**c. Idaho Property Factor Method.** ~~In January, 2011, a calendar year corporation purchased a road grader for fifty thousand dollars (\$50,000). Twenty percent (20%) of its hours were logged in Idaho during the year. In addition to the road grader, the taxpayer also purchased an asphalt layer and a dump truck in January, 2011. Twenty percent (20%) of the dump truck's hours were logged in Idaho during the year. Only the road grader and dump truck were used in Idaho during the year. The taxpayer's Idaho property factor is thirty percent (30%). The dump truck cost seventy-five thousand dollars (\$75,000), and the asphalt layer cost two hundred thousand dollars (\$200,000). The taxpayer has qualified investments totaling twenty-five thousand dollars (\$25,000), computed at twenty percent (20%) of the one hundred twenty-five thousand dollars (\$125,000) basis in the road grader and the dump truck. The investment tax credit is computed at three percent (3%) of the twenty-five thousand dollars (\$25,000) for a total credit of seven hundred fifty dollars (\$750). The taxpayer would include twenty-five thousand dollars (\$25,000) in the Idaho property factor numerator. The asphalt layer does not qualify for the credit since it was not used in Idaho at any time during 2011.~~ (4-4-13)

**d. Order of Limitations.** ~~Assume the taxpayer has two (2) asphalt layers costing two hundred thousand dollars (\$200,000) each that are both mobile and used property. Fifty percent (50%) of the hours of both asphalt layers was logged in Idaho during the year. The taxpayer has a two hundred thousand dollar (\$200,000) qualified investment computed by multiplying fifty percent (50%) by four hundred thousand dollars (\$400,000). The used property limitation of one hundred fifty thousand dollars (\$150,000) is applied to the two hundred thousand dollar (\$200,000) qualified investment and the investment tax credit allowed is computed at three percent (3%) of the one hundred fifty thousand dollars (\$150,000).~~ (4-4-13)

## 715. IDAHO INVESTMENT TAX CREDIT: RECAPTURE (RULE 715).

Section 63-3029B, Idaho Code

**01. In General.** If a taxpayer is claiming or has claimed the investment tax credit for property sold or otherwise disposed of, or that ceases to qualify pursuant to Section 63-3029B, Idaho Code, prior to being held five (5) full years, a recomputation of the credit will be made. (3-20-97)

**02. Recomputation of the Investment Tax Credit.** (3-20-97)

**a.** The recomputation of the credit and any recapture of prior credits is made pursuant to the Internal Revenue Code and Treasury Regulations for the taxable year in which the property is disposed of or ceases to qualify. (3-20-97)

**b.** The recapture is computed by multiplying the credit by the applicable recapture percentage in Subsection 715.04. (3-20-97)

**c.** The recapture of credit previously claimed against tax in prior taxable years is an addition to tax in the taxable year in which the property is disposed of or ceases to qualify. The addition to tax does not affect the computation of limitations used to determine the amount of investment tax credit or any other Idaho credit that may be claimed in the year of the recapture. (3-20-97)

**03. Unitary Taxpayers.** The corporation that earned the credit is responsible for the recapture or recomputation of the credit when the property ceases to qualify. (3-20-97)

**04. Applicable Recapture Percentages.** For qualified business property placed in service after December 31, 1990, the recapture amount is computed by multiplying the credit earned by the applicable recapture percentage. The length of time the asset qualifies determines the recapture percentage as follows: (3-20-97)

**a.** If less than one (1) year, use one hundred percent (100%); (3-20-97)

**b.** If more than one (1) year but less than two (2) years, use eighty percent (80%); (3-20-97)

**c.** If more than two (2) years but less than three (3) years, use sixty percent (60%); (3-20-97)

**d.** If more than three (3) years but less than four (4) years, use forty percent (40%); (3-20-97)

**e.** If more than four (4) years but less than five (5) years, use twenty percent (20%). (3-20-97)

**716. IDAHO INVESTMENT TAX CREDIT: RECORD-KEEPING REQUIREMENTS (RULE 716).**  
Section 63-3029B, Idaho Code

**01. Information Required.** Each taxpayer must retain and make available, on request, records for each item of property included in the computation of the investment tax credit claimed on an income tax return subject to examination. The records must include all of the following: (3-20-97)

**a.** A description of the property; (3-20-97)

**b.** The asset number assigned to the item of property, if applicable; (3-20-97)

**c.** The acquisition date and date placed in service; (3-20-97)

**d.** The basis of the property; (3-20-97)

**e.** The class of the property for recovery property or the estimated useful life for nonrecovery property; (3-20-97)

**f.** The designation as new or used property; (3-20-97)

**g.** The location and utilization (the usage both in and outside Idaho) of the property; (3-20-97)

**h.** The retirement, disposition, or date transferred out of Idaho, or date no longer used in Idaho, if applicable; and (3-20-97)

**i.** The reason for acquisition if acquired prior to January 1, 1995. (3-20-97)

**02. Accounting Records Subject to Examination.** Accounting records that may need to be examined to document acquisition, disposition, location, and utilization of assets include the following: (3-20-97)

**a.** Accounting documents that contain asset and account designations and descriptions. These documents include a chart of accounts, the accounting manual, controller's manual, or other documents containing this information. (3-20-97)

**b.** Asset location records including asset directories, asset registers, insurance records, property tax records, or similar asset inventory documents. (3-20-97)

**c.** Records verifying ownership including purchase contracts and cancelled checks. (3-20-97)

**d.** Invoices, shipping documents, and similar documents reflecting the transfer of assets in and out of Idaho. (3-20-97)

**e.** Purchase orders, authorizations for expenditures or other records that identify the reason for acquisition for property acquired prior to January 1, 1995. (3-20-97)

**f.** Log books measuring the use of property used both in and outside Idaho. These logs must be maintained for each item of property on which investment tax credit is claimed. These logs should measure use of property in accordance with the most accurate method for measuring the extent of use in Idaho. For example, use in Idaho of trucks, trailers, locomotives, and railcars are to be calculated according to actual mileage in and outside Idaho. (3-20-97)

**g.** A system that verifies that property on which the investment tax credit was claimed continues to maintain its status as Idaho qualifying property throughout the recapture period. (3-20-97)

**03. Failure to Maintain Adequate Records.** Failure to maintain any of the records required by this rule may result in the disallowance of the credit claimed. (3-20-97)

**04. Unitary Taxpayers.** Corporations claiming investment tax credit must provide a calculation of the credit earned and used by each member of the combined group. The schedule must clearly identify shared credit and the computation of any credit carryovers. (3-20-97)

**717. -- 718. (RESERVED)**

**719. IDAHO INVESTMENT TAX CREDIT: PROPERTY TAX EXEMPTION IN LIEU OF (RULE 719).**  
Section 63-3029B, Idaho Code

**01. In General.** Beginning with calendar year 2003, a qualifying taxpayer may elect a two (2) year property tax exemption on personal property placed in service during the year. Property placed in service prior to January 1, 2003, does not qualify for the exemption. The personal property must be qualified investment as defined in Section 63-3029B, Idaho Code, and Rules 710 through 716 of these rules. If the property tax exemption is elected on an item of personal property, the taxpayer may not earn the investment tax credit on that item. The election is irrevocable. (3-20-04)

**02. Terms.** As used in this rule: (3-20-04)

**a.** Qualifying Taxpayer. A taxpayer must meet both of the following requirements to qualify for the property tax exemption on personal property. (4-6-05)

**i.** The taxpayer's rate of charge or rate of return must not be regulated or limited by federal or state law. For example, if a corporation's rate of return is set by the Public Utilities Commission, that corporation is to not be eligible to claim the property tax exemption on any personal property it may place in service. The corporation may claim investment tax credit on the property if the property is qualified investment under Section 63-3029B, Idaho Code. Each

corporation included in a unitary group is to determine whether its rate of charge or rate of return is regulated or limited by federal or state law based solely on its own activities. (4-6-05)

ii. The taxpayer must have had negative Idaho taxable income in the second preceding taxable year. (4-6-05)

b. Second Preceding Taxable Year. The term second preceding taxable year means the second preceding taxable year from the taxable year in which the property is placed in service. (3-20-04)

**03. Negative Idaho Taxable Income in Second Preceding Taxable Year.** (4-6-05)

a. Net Operating Loss Carryovers and Carrybacks. Negative Idaho taxable income in the second preceding taxable year is to be determined prior to the application of any Idaho net operating loss carryforwards or carrybacks. (3-20-04)

b. Taxable year, for purposes of this calculation, includes a short taxable year as defined by the Internal Revenue Code. (3-20-04)



~~c. Examples of Determining Second Preceding Taxable Year. (3-20-04)~~

~~i. A taxpayer files income tax returns on a calendar year basis. During calendar year 2003, the taxpayer placed in service personal property that qualifies for the investment tax credit. The taxpayer's two (2) preceding taxable years were calendar years 2001 and 2002. To qualify for the property tax exemption on personal property, the taxpayer must have had negative Idaho taxable income in calendar year 2001, the second preceding taxable year from calendar year 2003. (3-20-04)~~

~~ii. A taxpayer files income tax returns on a June 30 fiscal year end basis. During the fiscal year ended June 30, 2003, the taxpayer placed in service between January 1, 2003, and June 30, 2003, personal property that qualifies for the investment tax credit. The taxpayer's two (2) preceding taxable years were fiscal years ended June 30, 2001, and June 30, 2002. To qualify for the property tax exemption, the taxpayer must have had negative Idaho taxable income in fiscal year ended June 30, 2001, the second preceding taxable year from fiscal year ended June 30, 2003. Property placed in service during the fiscal year ended June 30, 2003, but in calendar year 2002 does not qualify for the exemption. (4-6-05)~~

~~iii. Assume the same facts as in Subparagraph 719.03.c.ii., of this rule, except the taxpayer placed the property in service on September 30, 2003, during his fiscal year ended June 30, 2004. To qualify for the property tax exemption on personal property placed in service between July 1, 2003, and June 30, 2004, the taxpayer must have had negative Idaho taxable income in fiscal year ended June 30, 2002, the second preceding taxable year from the fiscal year ended June 30, 2004. (4-6-05)~~

~~iv. Assume the same facts as in Subparagraph 719.03.c.ii., of this rule, except the taxpayer's previous two (2) taxable years included a short taxable year from January 1, 2002, to June 30, 2002, and calendar year 2001. To qualify for the property tax exemption on personal property placed in service between January 1, 2003, and June 30, 2003, the taxpayer must have had negative Idaho taxable income in the taxable year for calendar year 2001, the second preceding taxable year from the fiscal year ended June 30, 2003. (4-6-05)~~

v. ~~Table of examples of determining second preceding taxable year.~~

<b>TAXABLE YEAR PROPERTY PLACED IN SERVICE</b>	<b>FIRST PRECEDING TAXABLE YEAR</b>	<b>SECOND PRECEDING TAXABLE YEAR</b>
Calendar year 2003	Calendar year 2002	Calendar year 2001
Calendar year 2004	Calendar year 2003	Calendar year 2002
Calendar year 2004	Calendar year 2003	Short taxable year beginning February 1, 2002 and ending December 31, 2002
Fiscal year beginning July 1, 2002 and ending June 30, 2003	Fiscal year beginning July 1, 2001 and ending June 30, 2002	Fiscal year beginning July 1, 2000 and ending June 30, 2001
Fiscal year beginning September 1, 2003 and ending August 31, 2004	Fiscal year beginning September 1, 2002 and ending August 31, 2003	Fiscal year beginning September 1, 2001 and ending August 31, 2002
Fiscal year beginning July 1, 2002 and ending June 30, 2003	Short taxable year beginning January 1, 2002 and ending June 30, 2002	Calendar year 2001

(3-20-04)

**d. Unitary Taxpayers.** Each corporation included in a unitary combined group is to use its Idaho taxable income, as determined pursuant to Section 63-3027, Idaho Code, to determine whether it had negative Idaho taxable income in the second preceding taxable year. See Rule 365 of these rules for more information on how unitary corporations determine their Idaho taxable income. (4-6-05)

**e. Pass-Through Entities.** A taxpayer who is a partnership or an S corporation does not qualify for the property tax exemption unless the total of its net business income apportioned to Idaho and its nonbusiness income or loss allocated to Idaho is negative for the second preceding taxable year. (3-20-04)

**f. Return Not Filed.** If a taxpayer has not filed an Idaho income tax return for the second preceding taxable year so that the loss can be verified, the taxpayer is not entitled to the exemption. (3-20-04)

#### **04. Used Property Limitation.** (3-20-04)

**a. In General.** The cost of used property that a taxpayer may take into account for any taxable year in computing qualified investment does not exceed one hundred fifty thousand dollars (\$150,000). This includes the cost of property the taxpayer placed in service during the taxable year and also his share of the cost of property placed in service during the taxable year by a partnership, S corporation, estate or trust. Because property must be qualified investment to qualify for the property tax exemption, the taxpayer is limited to one hundred fifty thousand dollars (\$150,000) for purposes of determining the property tax exemption. (3-20-04)

**b. Selection of Items of Used Property.** If the cost of the taxpayer's used property eligible for the investment tax credit exceeds the used property limitation, the taxpayer must select the particular items of used property the cost of which is to be taken into account in computing qualified investment. When the taxpayer selects a particular item, the entire cost or the taxpayer's share of cost of the particular item must be taken into account unless the one hundred fifty thousand dollar (\$150,000) limitation is exceeded. ~~For example, if a taxpayer places in service during the taxable year three (3) items of used property, each with a cost of sixty thousand dollars (\$60,000), the taxpayer must select the entire cost of two (2) of the items and only thirty thousand dollars (\$30,000) of the cost of the third item. The taxpayer may not select a portion of the cost of each of the three (3) items. The remaining thirty thousand dollars~~



~~(\$30,000) of the third item does not qualify for the investment tax credit nor the property tax exemption since it is not qualified investment. The selection by a taxpayer is made by taking the cost of the used property into account in computing the investment tax credit or the property tax exemption for a taxable year. (3-20-04)~~

**c. Electing Property Tax Exemption on Selected Used Property Items.** Once the taxpayer has selected the particular items of used property, the cost of which is to be taken into account in computing qualified investment, the taxpayer is to determine whether he may elect the property tax exemption on the items selected. If an item qualifies as personal property and the taxpayer had a negative Idaho taxable income in the second preceding taxable year, the taxpayer may elect to claim the property tax exemption on the item in lieu of earning the investment tax credit. ~~For example, assume the same facts as in Paragraph 719.04.b., of this rule. The taxpayer may elect the property tax exemption on any of the three (3) items, limited to the amount included as qualified investment if the item qualifies as personal property and the taxpayer had a negative Idaho taxable in the second preceding taxable year. (4-6-05)~~

## **720. CREDIT FOR IDAHO RESEARCH ACTIVITIES: IN GENERAL (RULE 720).**

Section 63-3029G, Idaho Code

**01. Definitions.** The Idaho credit is computed using the same definitions of qualified research expenses, qualified research, basic research payments, and basic research as are found in Section 41, Internal Revenue Code, except only the amounts related to research conducted in Idaho qualify for the Idaho credit. If an expense does not qualify for the federal credit under Section 41, Internal Revenue Code, it will not qualify for purposes of the Idaho credit. (4-7-11)

**02. Limitations.** The credit for Idaho research activities allowable in any taxable year is limited as follows: (4-7-11)

**a. Tax Liability.** The total amount of any credit for Idaho research activities claimed during a taxable year may not exceed one hundred percent (100%) of the tax, after allowing all other income tax credits that may be claimed before the credit for Idaho research activities, regardless of whether the credit for Idaho research activities results from a carryover earned in prior years, the current year, or both. See Rule 799 of these rules for the priority order for nonrefundable credits. (3-15-02)

~~**b. Credit for Qualifying New Employees.** If the credit for qualifying new employees is claimed in the current taxable year or carried forward to a future taxable year, the credit for Idaho research activities is limited by the provisions of Section 63-3029F, Idaho Code. (3-15-02)~~

**c. Unitary Taxpayers.** Limitations apply to each taxpayer according to its own tax liability. Each corporation in a unitary group is a separate taxpayer. See Rule 711 of these rules. (3-15-02)

~~**03. Carryovers.** The carryover period for the credit for Idaho research activities is fourteen (14) years. (3-15-02)~~

~~**04. Pass-Through Entities.** The credit may be earned by a partnership, S corporation, estate, or trust and passed through to the partner, shareholder, or beneficiary. See Rule 785 of these rules for the method of attributing the credit, for pass-through entities paying tax, and the application of limitations on pass-through credits. (3-15-02)~~

**05. Short Taxable Year Calculations.** Short taxable year calculations provided in Section 41, Internal Revenue Code, and related regulations are used to compute the Idaho credit if the taxpayer must use short taxable year calculations for purposes of computing the federal credit. (4-7-11)

**721. CREDIT FOR IDAHO RESEARCH ACTIVITIES: ELECTIONS (RULE 721).**

Section 63-3029G, Idaho Code

**01. Election to Be Treated as a Start-Up Company.** Regardless of whether a taxpayer qualifies as a start-up company for purposes of the federal credit for increasing research activities under Section 41, Internal Revenue Code, a taxpayer may elect to be treated as a start-up company for the credit for Idaho research activities. (3-15-02)

**a.** The election once made is irrevocable. (3-15-02)

**b.** The election is made by checking the appropriate box on Form 67. (4-7-11)

**c.** A taxpayer who makes the election under Section 63-3029G, Idaho Code, to be treated as a start-up company must use the fixed-base percentage that would be used by the taxpayer if the taxpayer had qualified as a start-up company for purposes of the federal credit under Section 41, Internal Revenue Code. ~~For example, if the taxpayer's fiscal year beginning in 2001 is the 8th such taxable year beginning after December 31, 1993 in which the taxpayer had Idaho-qualified research expenses, the fixed-base percentage is one-half (1/2) of the percentage that the aggregate qualified research expenses of the taxpayer for the 5th, 6th, and 7th such taxable years is of the aggregate gross receipts of the taxpayer for such years.~~ (4-7-11)

**02. Unitary Sharing.** A corporation included as a member of a unitary group may elect to share the credit for Idaho research activities it earns but does not use with other members of the unitary group. Before the corporation may share the credit, it must claim the credit for Idaho research activities to the extent allowable against its tax liability. The credit available to be shared is the amount of credit carryover and credit earned for the taxable year that exceeds the limitation provided in Section 63-3029G(3), Idaho Code, or Paragraph 720.02.b. of these rules, whichever is applicable. The limitation is applied against the tax computed for the corporation that claims the credit. Credit shared with another member of the unitary group reduces the carryforward. (3-15-02)

**722. (RESERVED)****723. CREDIT FOR IDAHO RESEARCH ACTIVITIES: RECORD-KEEPING REQUIREMENTS (RULE 723).**

Section 63-3029G, Idaho Code

**01. Information Required.** Each taxpayer must retain and make available, on request, records for each item included in the computation of the credit for Idaho research activities claimed on an Idaho income tax return. The records must include all of the following: (3-15-02)

**a.** Verification that the research was conducted in Idaho; (3-15-02)

**b.** Verification that wages included in the computation were for qualified service performed by an employee in Idaho; (3-15-02)

**c.** Verification that supplies included in the computation were used for research conducted in Idaho; (3-15-02)

**d.** Verification that contract research expenses were for research conducted in Idaho; (3-15-02)

**e.** Verification that the research activities meet the definition of qualified research; and (3-15-02)

**f.** Verification that the amounts included in the Idaho computation are includable in the computation of the federal credit allowed by Section 41, Internal Revenue Code. (3-15-02)

**02. Failure to Maintain Adequate Records.** Failure to maintain any of the records required by this rule may result in the disallowance of the credit claimed. (3-15-02)

**03. Unitary Taxpayers.** Corporations claiming the credit for Idaho research activities must provide a calculation of the credit earned and used by each member of the combined group. The schedule must clearly identify shared credit and the computation of any credit carryovers. (3-15-02)

**724. -- 729. (RESERVED)**

**730. CREDIT FOR CONTRIBUTIONS TO IDAHO YOUTH FACILITIES, REHABILITATION FACILITIES AND NONPROFIT SUBSTANCE ABUSE CENTERS (RULE 730).**

Section 63-3029C, Idaho Code

**01. Qualified Contributions.** Contributions must be made in cash or in kind during the taxable year the credit is claimed. Unpaid pledges do not qualify as contributions. Fees for services provided, room and board, and similar charges are not contributions. (3-30-01)

~~**02. Limitations: Individuals.** The credit allowed to an individual is fifty percent (50%) of the amount contributed limited to the lesser of: (3-20-97)~~

~~**a.** Twenty percent (20%) of his total income tax liability; or (3-20-97)~~

~~**b.** One hundred dollars (\$100) if filing other than a joint return or two hundred dollars (\$200) if filing a joint return. (3-20-97)~~

~~**03. Limitations: Corporations.** The credit allowed to a corporation is fifty percent (50%) of the amount contributed limited to the lesser of: (3-20-97)~~

~~**a.** Ten percent (10%) of its total income tax liability; or (3-20-97)~~

~~**b.** Five hundred dollars (\$500). (3-20-97)~~

**04. Pass-Through Entities.** The credit may be earned by a partnership, S corporation, estate or trust and passed through to the partner, shareholder, or beneficiary. ~~For pass-through entities paying tax and the application of limitations on pass-through credits, see Rule 785 of these rules.~~ (3-15-02)

**05. Other Limitations.** (3-30-01)

~~**a.** This credit is further limited if the credit for qualifying new employees is claimed. (3-15-02)~~

~~**b.** This credit plus any other nonrefundable credits may not reduce the taxpayer's tax liability below zero (0). See Rule 799 of these rules for the priority of credits. (3-15-02)~~

**06. Effect on Itemized Deductions.** The credit allowed does not reduce the amount of charitable contributions that may be included in itemized deductions. (3-20-97)

**731. -- 749. (RESERVED)**

**750. BROADBAND EQUIPMENT INVESTMENT CREDIT: IN GENERAL (RULE 750).**

Section 63-3029I, Idaho Code

~~**01. Credit Allowed.** The broadband equipment investment credit allowed by Section 63-3029I, Idaho Code, applies to investments made during taxable years beginning on and after January 1, 2001. The investment must also meet the requirements of Section 63-3029B, Idaho Code, and related rules as to what constitutes qualified investment. (4-6-05)~~

**02. ~~Limitations.~~** ~~The broadband equipment investment credit allowable in any taxable year will be limited as follows:~~ (4-11-15)

**a.** ~~The broadband equipment investment credit claimed during a taxable year may not exceed the lesser of:~~ (3-15-02)

**i.** ~~Seven hundred fifty thousand dollars (\$750,000); or~~ (3-15-02)

**ii.** ~~One hundred percent (100%) of the tax, after allowing all other income tax credits that may be claimed before the broadband equipment investment credit, regardless of whether this credit results from a carryover earned in prior years, the current year, or both. See Rule 799 of these rules for the priority order for nonrefundable credits.~~ (3-15-02)

**b.** ~~Credit for Qualifying New Employees. If the credit for qualifying new employees is claimed in the current taxable year or carried forward to a future taxable year, the broadband equipment investment credit is limited by the provisions of Section 63-3029F, Idaho Code.~~ (3-15-02)

**c.** ~~Unitary Taxpayers. Limitations apply to each taxpayer according to its own tax liability. Each corporation in a unitary group is a separate taxpayer. See Rule 711 of these rules.~~ (3-15-02)

**d.** ~~Transferred Credit. Limitations apply to each transferee as if the transferee had earned the credit.~~ (3-15-02)

**03. ~~Carryovers.~~** (3-15-02)

**a.** ~~The carryover period for the broadband equipment investment credit is fourteen (14) years.~~ (3-15-02)

**i.** The fourteen (14) year carryover period provided by section 63-3029I(7), Idaho Code, extends throughout the fourteen (14) taxable years following the year in which the equipment was installed. The fourteen (14) year carryover period begins to run regardless of whether the taxpayer has sought and received approval from the Idaho public utilities commission (PUC). (4-11-15)

**ii.** Once a taxpayer has received the approval order from the PUC, the broadband tax credit may be claimed or transferred. If the statute of limitations has expired for filing a return to claim the credit for the taxable year of the installation, the taxpayer cannot claim any credit for that taxable year, but must calculate how much of the credit the taxpayer could have used to determine the amount of credit available to carry forward pursuant to section 63-3029I(7), Idaho Code. (4-11-15)



**iii.** Example: A calendar year filer installed qualifying equipment on July 20, 2001. However, it was not until 2013 that the taxpayer sought and received the approval order from the PUC. The fourteen (14) year carryover period already began to run based on the installation date and will expire at the end of the 2015 taxable year. On March 10, 2013 the taxpayer is preparing his tax returns and considering how much broadband credit is available and to which taxable years it could be applied to. The taxpayer can file an amended return to claim the credit starting with taxable year 2009 (prior years would be out of the statute of limitations for filing an amended return assuming all returns had been timely filed and no other special circumstances had held the period open). The taxpayer must look back to taxable year 2001 (the year of installation) to see how much credit the taxpayer could have used in each taxable year up to 2009 to determine how much credit carryover amount is still available pursuant to the carryover limitations of section 63-3029I(7), Idaho Code. The taxpayer must use up or transfer any unused credit before taxable year 2016; after taxable year 2015, the carry forward period will expire and any unused credit will no longer be available for the taxpayer to apply or transfer. (4-11-15)

**b.** ~~See Rule 793 of these rules for the rules regarding the carryover of transferred credit.~~ (3-15-02)

**04. Taxpayers Entitled to the Credit.** Rule 711 of these rules will apply to the broadband equipment investment credit except that limitations referenced in Subsection 711.01 of these rules will be those limitations as provided in Section 63-3029I, Idaho Code. (4-11-15)

**05. Pass-Through Entities.** The credit may be earned by a partnership, S corporation, estate, or trust and passed through to the partner, shareholder, or beneficiary. See Rule 785 of these rules for the method of attributing the credit, for pass-through entities paying tax, and the application of limitations on pass-through credits. (3-15-02)

**751. (RESERVED)**

**752. ~~BROADBAND EQUIPMENT INVESTMENT CREDIT: RECAPTURE (RULE 752).~~**

~~Section 63-3029I, Idaho Code~~

~~**01. In General.** If a taxpayer is claiming or has claimed the broadband equipment investment credit for property sold or otherwise disposed of, or that ceases to qualify pursuant to Section 63-3029B, Idaho Code, prior to being held five (5) full years, a recomputation of the credit is to be made. See Rule 715 of these rules. (3-15-02)~~

~~**02. Unitary Taxpayers.** The corporation that earned the credit is responsible for the recapture or recomputation of the credit when the property ceases to qualify. (3-15-02)~~

~~**03. Transferred Credit.** The transferor is responsible for the recapture or recomputation of the credit when the property ceases to qualify. (3-15-02)~~

**753. BROADBAND EQUIPMENT INVESTMENT CREDIT: RECORD-KEEPING REQUIREMENTS (RULE 753).**

Section 63-3029I, Idaho Code

**01. Information Required.** Each taxpayer must retain and make available, on request, records for each item of property included in the computation of the broadband equipment investment credit claimed on an income tax return subject to examination. The records must include all of the following: (3-15-02)

**a.** The order from the Idaho Public Utilities Commission confirming that the installed equipment is qualified broadband equipment. (3-15-02)

**b.** A description of the property; (3-15-02)

**c.** The asset number assigned to the item of property, if applicable; (3-15-02)

**d.** The acquisition date and date placed in service; (3-15-02)

**e.** The basis of the property; and (3-15-02)

**f.** The retirement, disposition, or date transferred out of Idaho, or date no longer used in Idaho, if applicable. (3-15-02)

**02. Accounting Records Subject to Examination.** Accounting records that may need to be examined to document acquisition, disposition, location, and utilization of assets include the following: (3-15-02)

**a.** Source documents supporting the application to the Idaho Public Utilities Commission; (3-15-02)

**b.** Accounting documents that contain asset and account designations and descriptions. These documents include a chart of accounts, the accounting manual, controller's manual, or other documents containing this information; (3-15-02)

**c.** Asset location records including asset directories, asset registers, insurance records, property tax records, or similar asset inventory documents; (3-15-02)

- d. Records verifying ownership including purchase contracts and cancelled checks; (3-15-02)
- e. Invoices, shipping documents, and similar documents reflecting the transfer of assets in and out of Idaho; and (3-15-02)
- f. A system that verifies that property on which the broadband equipment investment credit was claimed continues to maintain its status as Idaho qualifying property throughout the recapture period. (3-15-02)

**03. Failure to Maintain Adequate Records.** Failure to maintain any of the records required by this rule may result in the disallowance of the credit claimed. (3-15-02)

**04. Unitary Taxpayers.** Corporations claiming broadband equipment investment credit must provide a calculation of the credit earned and used by each member of the combined group. The schedule must clearly identify shared credit and the computation of any credit carryovers. (3-15-02)

**05. Credit Transferred.** A taxpayer that transfers the broadband equipment investment credit is to continue to be subject to the record-keeping requirements of this rule for as long as the credit may be carried over by the transferee or until further assessment or deficiency determinations are barred by a period of limitation, whichever is longer. (3-15-02)

**754. -- 770. (RESERVED)**

**771. GROCERY CREDIT: TAXABLE YEARS BEGINNING AFTER DECEMBER 31, 2007 (RULE 771).**  
Section 63-3024A, Idaho Code

**01. Residents.** (5-8-09)

~~a. A resident individual may claim a credit for each personal exemption for which a deduction is permitted and claimed on his Idaho income tax return provided the personal exemption represents an individual who is a resident of Idaho. The maximum credit allowed per qualifying exemption is as follows:~~

TAX YEAR	IDAHO TAXABLE INCOME \$1,000 OR LESS	IDAHO TAXABLE INCOME MORE THAN \$1,000
2016	\$100	\$100
2015	\$100	\$100
2014	\$100	\$90
2013	\$100	\$80
2012	\$90	\$70
2011	\$80	\$60
2010	\$70	\$50
2009	\$60	\$40
2008	\$50	\$30

~~For tax years 2015 and after, the credit is one hundred dollars (\$100).~~ (3-28-18)

~~b. A resident individual claiming the credit who is age sixty-five (65) or older may claim an additional twenty dollars (\$20). An additional twenty dollar (\$20) credit may be claimed for a spouse who is age sixty-five (65) or~~

~~older.~~ The additional twenty dollar (\$20) credit may not be claimed for other dependents who are age sixty-five (65) or older. (5-8-09)

**02. Part-Year Residents.** A part-year resident is entitled to a prorated credit based on the number of months he was domiciled in Idaho during the taxable year. For purposes of this rule, a fraction of a month exceeding fifteen (15) days is treated as a full month. If the credit exceeds his tax liability, the part-year resident is not entitled to a refund. (5-8-09)

**03. Circumstances Causing Ineligibility.** A resident or part-year resident individual is not eligible for the credit for the month or part of the month for which the individual: (5-8-09)

a. Received assistance under the federal food stamp program; or (5-8-09)

b. Was incarcerated. (5-8-09)

**04. Nonresidents.** A nonresident is not entitled to the credit even though the individual may have been employed in Idaho for the entire year. (5-8-09)

~~05. Illegal Residents. An individual residing illegally in the United States is not entitled to the credit. (5-8-09)~~

**06. Members of the Uniformed Services.** A member of the uniformed services who is: (4-7-11)

a. Domiciled in Idaho is entitled to this credit; (5-8-09)

b. Residing in Idaho but who is a nonresident pursuant to the Servicemembers Civil Relief Act is not entitled to this credit. (5-8-09)

~~e. See Rule 032 of these rules for the definition of member of the uniformed services. (4-7-11)~~

**07. Spouse or Dependents of Members of the Uniformed Services.** Beginning on January 1, 2009, a spouse of a nonresident member of the uniformed services stationed in Idaho who has the same domicile as the military service member's home of record and who is residing in Idaho solely to be with the servicemember is a nonresident and is not entitled to the grocery credit. A spouse who is domiciled in Idaho is entitled to the credit. The domicile of a dependent child is presumed to be that of the nonmilitary spouse. (4-7-11)

**08. Claiming the Credit.** (5-8-09)

~~a. An individual who is required to file an Idaho individual income tax return must claim the credit on his return. If the credit exceeds his tax liability, the resident will receive a refund. (4-7-11)~~

~~b. An individual who is not required to file an Idaho individual income tax return must file a claim for refund of the credit on a form approved by the Tax Commission on or before April 15 following the year for which the credit relates. (4-7-11)~~

~~c. No credit may be refunded three (3) years after the due date of the claim for refund, including extensions, if a return was required to be filed under Section 63-3030, Idaho Code. (4-7-11)~~

~~09. Donating the Credit. Taxpayers may elect to donate the entire credit to the Cooperative Welfare Fund created pursuant to Section 56-401, Idaho Code. A taxpayer may not make a partial donation of the credit. The election must be made as indicated on the form on which the credit was claimed. The election is irrevocable and may not be changed on an amended return. (5-8-09)~~

772. -- 774. (RESERVED)



**775. CREDIT FOR LIVE ORGAN DONATION EXPENSES (RULE 775).**

Section 63-3029K, Idaho Code

**01. Credit Allowed.** ~~The credit for live organ donation expenses allowed by Section 63-3029K, Idaho Code, applies to live organ donation expenses incurred by a taxpayer during taxable years beginning on or after January 1, 2007.~~ (3-30-07)

**02. Limitations.** ~~The credit allowed to an individual for the taxable year in which the live organ donation occurs is limited to the lesser of:~~ (3-30-07)

**a.** ~~The amount of live organ donation expenses paid by the taxpayer during the taxable year, or~~ (3-30-07)

**b.** ~~Five thousand dollars (\$5,000).~~ (3-30-07)

**03. Live Organ Donation.** ~~A live organ donation means a donation by a living individual who donates the following for transplanting in another individual:~~ (3-30-07)

**a.** ~~Human bone marrow, or~~ (3-30-07)

**b.** ~~Any part of an organ including the following:~~ (3-30-07)

**i.** ~~Intestine,~~ (3-30-07)

**ii.** ~~Kidney,~~ (3-30-07)

**iii.** ~~Liver,~~ (3-30-07)

**iv.** ~~Lung, or~~ (3-30-07)

**v.** ~~Pancreas.~~ (3-30-07)

**04. Live Organ Donation Expenses.** ~~Qualifying expenses is to be directly related to a live organ donation by the taxpayer or by a dependent of the taxpayer and includes the following:~~ (3-30-07)

**a.** ~~The unreimbursed cost of travel paid by the taxpayer to and from the place where the donation operation occurred.~~ (3-30-07)

**b.** ~~Unreimbursed lodging expenses paid by the taxpayer.~~ (3-30-07)

**c.** ~~Wages or other compensation lost because of the taxpayer's absence from work during the donation procedure and convalescence.~~ (3-30-07)

**05. Carryover.** ~~The carryover period for the credit for live organ donation expenses is five (5) years.~~ (3-30-07)

~~776. --- 784. (RESERVED)~~

**785. CREDITS: PASS-THROUGH ENTITIES (RULE 785).**

Section 63-3029(a), Idaho Code

**01. In General.** A credit earned by a partnership, S corporation, estate, or trust generally is claimed on the income tax returns of the partners, shareholders, or beneficiaries of the entity. (3-20-97)

**a. Partnerships.** A credit passes through to a partner based on that partner's distributive share of partnership profits. (3-20-97)

**b.** S Corporations. A credit passes through to a shareholder based on that shareholder's pro rata share of income or loss. (3-20-97)

**c.** Estates and Trusts. A credit passes through to a beneficiary in the same ratio that income is allocable to that beneficiary. (3-20-97)

**d.** Idaho credits may not pass through to partners or owners based on special allocations. (5-8-09)

**02. Limitations.** (3-20-97)

**a.** In General. Credits claimed on a partner's, shareholder's, or beneficiary's tax return may not exceed the limitations imposed by statute or rule. (3-20-97)

**b.** ~~Example. Partnership XYZ has three (3) individual partners who each are entitled to a one-third (1/3) share of the partnership profits. The partnership contributed three thousand dollars (\$3,000) to an educational institution. The contribution qualifies for the credit provided by Section 63-3029A, Idaho Code. One-third (1/3) of the contribution, one thousand dollars (\$1,000), passes through to Partner X who files a joint return. He is allowed a credit of fifty percent (50%) of the amount contributed, but is limited to the lesser of two hundred dollars (\$200) or twenty percent (20%) of his total income tax liability.~~ (3-15-02)

**e.** ~~Example. Assume the same facts as in Subsection 785.02.b., except Partner X also contributed two hundred dollars (\$200) to a qualifying educational institution. Partner X is treated as contributing one thousand two hundred dollars (\$1,200), to a qualifying educational institution. Since fifty percent (50%) of his contributions, six hundred dollars (\$600) exceeds the limitation, the credit is limited to the lesser of two hundred dollars (\$200) or twenty percent (20%) of his total income tax liability. The credit is not increased because part of the contribution was from Partner X as an individual and part from the partnership.~~ (3-15-02)

**03. Carryovers.** Carryovers of credit are allowed to the partner, shareholder, or beneficiary to the extent provided by statute or rule. (3-20-97)

**04. Different Taxable Year Ends.** If a pass-through entity has a taxable year end different from that of a partner, shareholder, or beneficiary, the credit is available in the same taxable year that income or loss from that entity is reported. (3-20-97)

**05. Information Provided by a Pass-Through Entity.** The pass-through entity is to prepare and distribute to each partner, shareholder, or beneficiary a schedule detailing the proportionate share of each credit earned and any recapture that is required. Copies of these schedules are to be attached to the pass-through entity's Idaho income tax return or information return for the taxable year that the credit is earned and to each return on which the credit is claimed. (3-20-97)

**06. Pass-Through Entities That Pay Tax.** (3-30-01)

**a.** A pass-through entity may apply and may recapture credits that generally pass through to the partner, shareholder, or beneficiary for whom the pass-through entity is paying the tax. For example, Idaho investment tax credit earned that would have passed through to the owner or beneficiary could be claimed by the pass-through entity subject to the applicable limitations. Limitations based on the tax liability apply to each owner's or beneficiary's tax liability being paid by the pass-through entity. (3-30-01)

**b.** The partner, shareholder or beneficiary is responsible for the recapture or recomputation of credits passed through to the partner, shareholder, or beneficiary. (3-30-01)

**c.** Carryovers that exist after a pass-through entity offsets the tax with credit available to that partner, shareholder or beneficiary, remain a carryover of the partner, shareholder or beneficiary. (3-30-01)

**786. -- 789. (RESERVED)**

**790. TRANSFER OF CREDIT: IN GENERAL (RULE 790).**Sections 63-3029I and ~~63-3029J~~, Idaho Code

~~**01. In General.** A credit may be transferred only as specifically allowed in the statute authorizing the credit. The following credits are the only credits that may be transferred: (3-15-02)~~

~~a. The broadband equipment investment credit, as allowed by Section 63-3029I, Idaho Code. (3-15-02)~~

**02. Terms.** For purposes of Rules 790 through 795 of these rules, the following terms have the stated meanings: (3-15-02)

a. Transferor. The taxpayer who earns the credit and sells, conveys, or transfers the credit to another taxpayer are referred to as the transferor. (3-15-02)

b. Transferee. The taxpayer who receives the credit from the transferor or intermediary is referred to as the transferee. (3-20-04)

~~**03. Transfer Limited.** (3-20-04)~~

~~a. The broadband equipment investment credit may be transferred to another taxpayer required to file an Idaho income tax return or to an intermediary. The intermediary may use all or a portion of the broadband equipment investment credit or resell the credit to a taxpayer required to file an Idaho income tax return. The broadband equipment investment credit may not be transferred more than two (2) times. (3-20-04)~~

~~b. A taxpayer who receives credit through unitary sharing may not transfer the credit to another taxpayer. (3-20-04)~~

**791. TRANSFER OF CREDIT: NOTIFICATION OF INTENDED TRANSFER (RULE 791).**Sections 63-3029I and ~~63-3029J~~, Idaho Code

**01. Timing of Notification.** A taxpayer who intends to transfer qualified credit is to notify the Tax Commission in writing of its intent to transfer the credit at least sixty (60) days prior to the date of the transfer. A transfer may not take place prior to the Tax Commission providing its response as to the amount of credit available and the years the credit may be carried forward. (3-15-02)

**02. Information Required.** A transferor or intermediary is to notify the Tax Commission by submitting the following information on a form prescribed by the Tax Commission: (3-20-04)

a. Name, address, and federal employer identification number of the transferor or intermediary; (3-20-04)

b. Name, address, and federal employer identification number of the transferee; (3-15-02)

c. Type of credit to be transferred; (3-15-02)

d. Amount of credit to be transferred; (3-15-02)

e. Date of intended transfer; (3-20-04)

f. Signature of authorized individual for transferor or intermediary; and (3-20-04)

g. A copy of the Idaho Form 68, Idaho Broadband Equipment Investment Credit and required schedules for each tax year the credit being transferred was earned. (3-26-19)

**792. ~~TRANSFER OF CREDIT: POSTING BOND (RULE 792).~~**~~Section 63-3029J, Idaho Code~~

~~**01. Posting Bond or Security.** Section 63-3029J, Idaho Code, provides that prior to obtaining the written statement from the Tax Commission that the transferor may transfer the credit, the transferor may be required to secure any liability by posting a bond or security as the Tax Commission may require. The Tax Commission will require the transferor to post a bond or security only if after receiving the request to transfer credit, the Tax Commission deems the requirement necessary. (5-3-03)~~

~~**02. Waiver of Bond or Security.** If the Tax Commission requires the transferor to secure the liability by posting a bond or security, the transferor may request that the Tax Commission waive the bond requirement if the transferor shows that he is financially responsible. A notice of denial of the bond waiver is to be treated in accordance with Section 63-3045, Idaho Code. A notice of denial of the bond waiver is subject to review in accordance with Section 63-3045B, Idaho Code. (5-3-03)~~

**793. TRANSFER OF CREDIT: TRANSFEREE (RULE 793).**Sections 63-3029I and ~~63-3029J~~, Idaho Code

**01. Tax Year Credit Available.** A transferee may first claim the transferred credit on an income tax return originally filed during the calendar year in which the transfer takes place. However, if the transferee did not claim the transferred credit on his original return filed during the calendar year in which the transfer takes place, he may not amend such return to claim the credit for that tax year. ~~The credit may not be claimed on a tax return that begins prior to January 1, 2001.~~ (3-20-04)

~~**02. Copy of Transfer Form Required.** The form verifying the transferred credit is to be attached to the income tax return for each taxable year that the credit is claimed or carried over. (3-15-02)~~

**03. Carryover Period.** If a credit is transferred, the transferee is entitled to any remaining carryover period that would have been allowed to the transferor or intermediary had the credit not been transferred. The Tax Commission is to verify the carryover period. The carryover period approved applies to the taxable year of the transferee that begins in the calendar year in which the transferor's taxable year begins. (3-20-04)

~~**a.** Taxpayer A earned the broadband equipment investment credit in his taxable year beginning in 2002. He claimed part of the credit on his return for that year. In October of 2003, Taxpayer A sold the remaining credit to Taxpayer B, an intermediary. Taxpayer B resold the credit in May of 2004 to Taxpayer C. Taxpayer C claimed the credit on his original return for taxable year beginning in 2003, which he filed in November of 2004. Taxpayer C has a thirteen (13)-year carryover remaining, the same as Taxpayer B would have been entitled to. (3-20-04)~~

**794. -- 798. (RESERVED)****799. PRIORITY ORDER OF CREDITS AND ADJUSTMENTS TO CREDITS (RULE 799).**

Section 63-3029P, Idaho Code

**01. Tax Liability.** Tax liability is the tax imposed by Sections 63-3024, 63-3025, and 63-3025A, Idaho Code. (3-20-97)

**02. Nonrefundable Credits.** A nonrefundable credit is allowed only to reduce the tax liability. A nonrefundable credit not absorbed by the tax liability is lost unless the statute authorizing the credit includes a carryover provision. Nonrefundable credits apply against the tax liability in the following order of priority: (3-20-97)

**a.** Credit for taxes paid to other states as authorized by Section 63-3029, Idaho Code; (3-20-97)

**b.** For part-year residents only, the grocery credit as authorized by Section 63-3024A, Idaho Code; (5-3-03)

- c.** Credit for contributions to Idaho educational institutions as authorized by Section 63-3029A, Idaho Code; (3-20-97)
- d.** Investment tax credit as authorized by Section 63-3029B, Idaho Code; (3-20-97)
- e.** Credit for contributions to Idaho youth facilities, rehabilitation facilities, and nonprofit substance abuse centers as authorized by Section 63-3029C, Idaho Code; (3-30-01)
- f.** Credit for equipment using postconsumer waste or postindustrial waste as authorized by Section 63-3029D, Idaho Code; (3-30-01)
- g.** Promoter-sponsored event credit as authorized by Section 63-3620C, Idaho Code; (3-15-02)
- h.** Credit for Idaho research activities as authorized by Section 63-3029G, Idaho Code; (3-15-02)
- i.** Broadband equipment investment credit as authorized by Section 63-3029I, Idaho Code; and (3-15-02)
- j.** Small employer investment tax credit as authorized by Section 63-4403, Idaho Code. (4-11-06)
- k.** Small employer real property improvement tax credit as authorized by Section 63-4404, Idaho Code. (4-11-06)
- l.** Small employer new jobs tax credit as authorized by Section 63-4405, Idaho Code. (4-11-06)
- m.** Credit for live organ donation expenses as authorized by Section 63-3029K, Idaho Code. (3-30-07)
- n.** Idaho child tax credit as authorized by Section 63-3029L, Idaho Code. (3-26-19)
- 03. Adjustments to Credits.** (4-11-06)
  - a.** Adjustments to the amount of a credit earned is determined pursuant to the law applicable to the taxable year in which the credit was earned. (4-11-06)
  - b.** Adjustments to the amount of a credit earned may be made even though the taxable year in which the credit was earned is closed due to the statute of limitations. Such adjustments to the earned credit also applies to any taxable years to which the credit was carried over. (4-11-06)
  - c.** If the taxable year in which the credit was earned or carried over to is closed due to the statute of limitations, any adjustments to the credit earned does not result in any tax due or refund for the closed taxable years. However, the adjustments may result in tax due or a refund in a carryover year if the carryover year is open to the statute of limitations. (4-11-06)

**800. VALID INCOME TAX RETURNS (RULE 800).**

Section 63-3030, Idaho Code

**01. Requirements of a Valid Income Tax Return.** In addition to the requirements set forth in IDAPA 35.02.01, "Tax Commission Administration and Enforcement Rules," Rule 150, an income tax return is to meet the requirements set forth in this rule. Those that fail to meet these requirements are invalid. They may be rejected and returned to the taxpayer to be completed according to these requirements and resubmitted to the Tax Commission. A taxpayer who does not file a valid income tax return is considered to have filed no return. (3-15-02)

~~**02. Copy of Federal Return Required.** A taxpayer is to include with the Idaho return a complete copy of the federal income tax return including all forms, schedules and attachments. (4-2-08)~~

- c.** Credit for contributions to Idaho educational institutions as authorized by Section 63-3029A, Idaho Code; (3-20-97)
- d.** Investment tax credit as authorized by Section 63-3029B, Idaho Code; (3-20-97)
- e.** Credit for contributions to Idaho youth facilities, rehabilitation facilities, and nonprofit substance abuse centers as authorized by Section 63-3029C, Idaho Code; (3-30-01)
- f.** Credit for equipment using postconsumer waste or postindustrial waste as authorized by Section 63-3029D, Idaho Code; (3-30-01)
- g.** Promoter-sponsored event credit as authorized by Section 63-3620C, Idaho Code; (3-15-02)
- h.** Credit for Idaho research activities as authorized by Section 63-3029G, Idaho Code; (3-15-02)
- i.** Broadband equipment investment credit as authorized by Section 63-3029I, Idaho Code; and (3-15-02)
- j.** Small employer investment tax credit as authorized by Section 63-4403, Idaho Code. (4-11-06)
- k.** Small employer real property improvement tax credit as authorized by Section 63-4404, Idaho Code. (4-11-06)
- l.** Small employer new jobs tax credit as authorized by Section 63-4405, Idaho Code. (4-11-06)
- m.** Credit for live organ donation expenses as authorized by Section 63-3029K, Idaho Code. (3-30-07)
- n.** Idaho child tax credit as authorized by Section 63-3029L, Idaho Code. (3-26-19)
- 03. Adjustments to Credits.** (4-11-06)
  - a.** Adjustments to the amount of a credit earned is determined pursuant to the law applicable to the taxable year in which the credit was earned. (4-11-06)
  - b.** Adjustments to the amount of a credit earned may be made even though the taxable year in which the credit was earned is closed due to the statute of limitations. Such adjustments to the earned credit also applies to any taxable years to which the credit was carried over. (4-11-06)
  - c.** If the taxable year in which the credit was earned or carried over to is closed due to the statute of limitations, any adjustments to the credit earned does not result in any tax due or refund for the closed taxable years. However, the adjustments may result in tax due or a refund in a carryover year if the carryover year is open to the statute of limitations. (4-11-06)

**800. VALID INCOME TAX RETURNS (RULE 800).**

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**02. Copy of Federal Return Required.** A taxpayer is to include with the Idaho return a complete copy of the federal income tax return including all forms, schedules and attachments. (4-2-08)

**03. Verification of Idaho Income Tax Withheld.** A taxpayer who files an Idaho individual income tax return that is submitted on paper and reports Idaho income tax withheld is to attach appropriate Forms W-2 and 1099 and other information forms that verify the amount of the Idaho income tax withheld and claimed on the Idaho income tax return. Returns filed electronically is to include the W-2 and 1099 information in the electronic record transmitted. (5-8-09)

**801. PERSONS REQUIRED TO FILE INCOME TAX RETURNS (RULE 801).**

Section 63-3030, Idaho Code

**01. In General.** Persons who meet the filing requirements under Section 63-3030, Idaho Code, will file Idaho income tax returns unless otherwise provided in the Idaho Income Tax Act or by federal law. (3-20-14)

**02. Individuals Who Make Elections Under Section 63-3022L, Idaho Code.** For taxable years beginning prior to January 1, 2012, if an individual partner, member, shareholder, or beneficiary is qualified and makes an election under Section 63-3022L, Idaho Code, for the entity to pay the tax attributable to his income from the entity, such individual will not be required to file an Idaho individual income tax return for that taxable year. (3-20-14)

**03. Corporations Included in a Unitary Group.** A unitary group of corporations may file one (1) Idaho corporate income tax return for all the corporations of the unitary group that are required to file an Idaho income tax return. Use of the group return precludes the need for each corporation to file its own Idaho corporate income tax return. See Rule 365 of these rules. (3-30-07)

**04. Taxpayers Protected Under Public Law 86-272.** A taxpayer whose Idaho business activities fall under the protection of Public Law 86-272 is not required to file an Idaho income tax return since the taxpayer is exempt from the tax imposed under the Idaho Income Tax Act. If a taxpayer is a member of a unitary group, it will be included in the combined report although it is exempt from the income tax. The taxpayer's property, payroll, and sales will be included in the computation of the group factor denominators and its business income will be included in the computation of apportionable income for the unitary group. (3-20-14)

**802. (RESERVED)**

~~**803. ROUNDING (RULE 803).**~~

~~Section 63-113, Idaho Code. Amounts shown or required to be shown on any return, form, statement or other document required to be submitted to the Tax Commission under Title 63, Chapter 30, Idaho Code, will be rounded to the nearest whole dollar. Amounts less than fifty cents (\$.50) are reduced to the whole dollar. Amounts of fifty cents (\$.50) or more are increased to the next whole dollar. (4-5-00)~~

**804. (RESERVED)**

**805. JOINT RETURNS (RULE 805).**

Sections 63-3031, 32-201, and 32-209, Idaho Code

~~**01. Effect of Filing Status Used on Federal Returns.** A married couple, as defined in Section 32-201, Idaho Code, or recognized by Section 32-209, Idaho Code, is to use the same filing status with Idaho as used when filing returns with the Internal Revenue Service. (3-20-14)~~

**02. In General.** (3-20-97)

~~**a.** Only a married couple, as defined in Section 32-201, Idaho Code, or recognized by Section 32-209, Idaho Code, may file a joint return. Section 63-3024, Idaho Code, provides for joint return tax rates for individuals filing joint returns and for an individual qualifying as a surviving spouse or head of household. (3-20-14)~~

~~**b.** If a married couple files a joint return and the due date for filing a separate return has expired for either spouse, separate returns may not be filed thereafter. For example, a married couple files a joint return before April 15 in~~



~~the year due and desires to change their federal and state election to file separately. They may do so only if they file the separate returns on or before April 15.~~ (3-20-97)

**03. Resident Aliens or United States Citizens Married to Nonresident Aliens.** A United States citizen or resident married to a nonresident alien may elect to treat the spouse as a resident alien allowing them to file a joint return. In this case they are taxed on their worldwide income. The individuals must be able to provide all records and information necessary to determine their tax liability. A statement declaring the election is to be attached to the return for the first taxable year for which the election is to apply. In addition, the statement will include the name, address, and taxpayer identification number of each spouse, and is to be signed by both individuals making the election. (3-20-97)

**806. -- 809. (RESERVED)**

**810. TIME FOR FILING INCOME TAX RETURNS (RULE 810).**

Section 63-3032, Idaho Code

**01. Due Date of Returns.** (7-1-98)

~~a. All taxpayers except farmer's cooperatives. Each taxpayer, whether a corporation, S corporation, individual, partnership, estate or trust, is required to file an income tax return with the Tax Commission on or before the fifteenth day of the fourth month following the close of the taxable year. A taxable year, for this purpose, includes a short taxable year as defined by the Internal Revenue Code. However, if the time for filing a short taxable year for federal income tax purposes is later than the fifteenth day of the fourth month following the close of the taxable year, the later date will be the date the return is required to be filed with the Tax Commission.~~ (4-4-13)

~~b. Farmer's cooperatives. Each farmers' cooperative taxable pursuant to Section 63-3025B, Idaho Code, is required to file an income tax return with the Tax Commission on or before the fifteenth day of the ninth month following the close of the taxable year.~~ (7-1-98)

~~02. Timely Filing Defined. If the last day for filing a return falls on a Saturday, Sunday, legal holiday, or a holiday recognized by the Internal Revenue Service, the return is deemed timely filed if it is filed on the next day that is not a Saturday, Sunday, or legal holiday. This rule also applies to returns falling due at the end of a period of extension granted by the Tax Commission. A legal holiday, for this purpose, is any holiday recognized by the state of Idaho, including special holidays declared by the Governor.~~ (4-4-13)

~~03. Mail. Section 63-217(1), Idaho Code, specifies that an income tax return sent through the mail is filed timely if it is postmarked on or before the due date of the return. See IDAPA 35.02.01, "Tax Commission Administration and Enforcement Rules," Rule 010.~~ (3-15-02)

~~04. Fifty-Two/Fifty-Three Week Years. A fifty-two fifty-three (52-53) week year is considered to end on the last day of the calendar month ending nearest to the last day of that taxable year. For example, the taxable year of a taxpayer with a fifty-two fifty-three (52-53) week year that ends on February 3 is considered to end on January 31. In this example the due date of the return is May 15, the fifteenth day of the fourth month following January 31.~~ (3-20-97)

**811. -- 814. (RESERVED)**

**815. EXTENSIONS OF TIME (RULE 815).**

Section 63-3033, Idaho Code

~~01. Taxpayers Abroad. An extension granted by the Internal Revenue Service when a taxpayer has not yet met either the bona fide resident test or the physical presence test pursuant to Section 911, Internal Revenue Code, but expects to qualify after the two (2) month extension, is accepted as a valid extension for Idaho filing purposes. A copy of the approved federal extension form must accompany the Idaho income tax return.~~ (7-1-99)

~~**02. Individuals in Combat Zone.** Section 7508, Internal Revenue Code, applies to individuals who are serving in a combat zone or who are hospitalized as a result of serving in a combat zone. In this case, returns are not due until one hundred eighty (180) days after the period of qualified service or qualified hospitalization, whichever occurs last. For individuals entitled to this extension of time, interest accrues on the portion of the tax not paid from the extended due date. (2-27-12)~~

~~**03. Interest.** Interest accrues on the portion of the tax not withheld or paid from the due date until the date the return is filed and the full amount of tax is paid. Exceptions only apply in the case of an individual in a combat zone as allowed by Section 63-3033(g), Idaho Code, and Subsection 815.02 of this rule, and when disaster relief is granted to a taxpayer as allowed under Section 63-114, Idaho Code, and Rule 817 of these rules. A taxpayer will not receive interest on amounts withheld or on corporation estimated tax in excess of the actual tax liability. See Section 63-3073, Idaho Code. (2-27-12)~~

~~**816. (RESERVED)**~~

~~**817. EXTENSIONS OF TIME AS DISASTER RELIEF (RULE 817).**~~

~~Section 63-114, Idaho Code~~

~~**01. In General.** Section 63-114, Idaho Code, allows the Tax Commission to grant an extension of time for up to one (1) year from the due date to file returns or make payments in the following situations: (5-3-03)~~

~~**a.** When a taxpayer is adversely affected by a disaster declared by the President of the United States or by a governor of a state or territory of the United States; (5-3-03)~~

~~**b.** When a taxpayer is entitled to an extension under Section 7508A, Internal Revenue Code, due to a Presidentially declared disaster or a terroristic or military action. (5-3-03)~~

~~**02. Penalties and Interest.** If an extension of time to file a return or pay tax is allowed under Section 63-114, Idaho Code, penalties and interest will not apply during the extension period. If the taxpayer fails to file by the extended due date, penalties as provided under Section 63-3046, Idaho Code, and interest applies after the extended due date to the date of payment. (5-3-03)~~

~~**818. -- 819. (RESERVED)**~~

~~**820. CORPORATE ESTIMATED PAYMENTS: IN GENERAL (RULE 820).**~~

~~Section 63-3036A, Idaho Code~~

~~**01. Estimated Tax.** The term estimated tax means the corporation's anticipated tax as imposed by this Chapter including the permanent building fund tax, plus any recapture of Idaho income tax credits, less the sum of any income tax credits. Estimated payments and non-income tax credits are not included as a credit. (5-3-03)~~

~~**02. Computation of Estimated Payments. (3-20-97)**~~

~~**a.** Estimated tax is paid in four (4) payments. Each estimated payment is to be twenty-five percent (25%) of the lesser of the tax required to be reported on the taxpayer's return filed for the preceding taxable year or ninety percent (90%) of the tax required to be paid on the current year's return. (3-20-97)~~

~~**b.** The tax required to be reported on the preceding year's return and the tax required to be paid on the current year's return means Idaho taxable income multiplied by the corporate income tax rate with a minimum of twenty dollars (\$20), plus the permanent building fund tax, plus the recapture of income tax credits, less income tax credits excluding estimated payments. (5-3-03)~~

~~**c.** An estimated payment is not required if an Idaho return was not required for the previous taxable year. (3-20-97)~~

**03. Revised Income Estimate.** If, after making one or more estimated payments for a taxable year, a corporation makes a new estimate of its current year income, it recomputes its estimated tax. If the corporation has paid its new estimated tax in prior estimated payments, no payment is due. (3-20-97)

**04. Net Operating Loss or Capital Loss Carryover.** The allowable net operating loss carryover or capital loss carryover is to be deducted from income for the period before the estimated tax is computed. (5-3-03)

## **821. CORPORATE ESTIMATED PAYMENTS: PAYMENTS (RULE 821).**

Section 63-3036A, Idaho Code

**01. Underpayments.** A payment of estimated tax is to be applied to previous estimated payments of estimated tax in the order in which the estimated payments were required to be paid. To the extent the payment exceeds previous underpayments, it applies to the estimated payment then due. (3-20-97)

**02. Overpayments.** (3-20-97)

**a.** If the estimated payments exceed the actual tax due, the overpayment may be claimed as a credit against the next payment only to the extent it exceeds all underpayments of prior estimated payments. (3-20-97)

**b.** The overpayment is to be applied to deficiencies of tax, penalties, and interest prior to refund or application to a subsequent year's estimated payment or tax liability. (3-20-97)

**c.** A refund or credit may not be made to a corporation that fails to file its Idaho income tax return within three (3) years from the due date of the return for which it made the estimated payments. (3-20-97)

**03. Obligation to File Returns.** The payment of estimated tax does not relieve a corporation of the obligation to file a return when due pursuant to the Idaho Income Tax Act. An extension of time is not allowed for payment of estimated taxes. Making estimated payments as required in Section 63-3036A, Idaho Code, does not relieve the taxpayer of the requirement to pay the appropriate amount of tax with an application for extension of time to file or with the original return. (3-20-97)

## **822. CORPORATE ESTIMATED PAYMENTS: ANNUALIZED INCOME INSTALLMENT METHOD (RULE 822).**

Section 63-3036A, Idaho Code

**01. In General.** (3-20-97)

**a.** If a corporation uses the annualized income installment method for federal purposes and is required to make estimated payments for Idaho purposes, the corporation may use that method to compute its Idaho estimated tax. If a corporation does not use the annualized income installment method for federal purposes, the corporation may not use that method for Idaho purposes. (3-20-97)

**b.** See Section 6655, Internal Revenue Code, for the determination of annualized income. (3-20-97)

**02. Required Installment.** The required annualized income installment is the applicable percentage of the tax computed on the annualized income less the aggregate amount of any prior required installments for the reporting period. The applicable percentages for Idaho are: (3-20-97)

**a.** Twenty-two and one-half percent (22.5%) for the first period; (3-20-97)

**b.** Forty-five percent (45%) for the second period; (3-20-97)

**c.** Sixty-seven and one-half percent (67.5%) for the third period; and (3-20-97)

**d.** Ninety percent (90%) for the fourth period. (3-20-97)

**03. Computation of Tax.** The tax computed on the annualized income includes the annualized income multiplied by the corporate income tax rate, plus the permanent building fund tax, plus recapture of investment tax credit, less any credits excluding estimated payments. (3-20-97)

**823. CORPORATE ESTIMATED PAYMENTS: SHORT TAXABLE YEAR (RULE 823).**

Section 63-3036A, Idaho Code

**01. In General.** If a short taxable year ends before an estimated payment due date, remaining estimated payments is to be made on the fifteenth day of the last month of the short taxable year. No estimated payment is required if the short taxable year is less than four (4) months or if the corporation does not meet the requirements to make an estimated payment before the first day of the last month in the short taxable year. (3-20-97)

**02. Examples.** (3-20-97)

**a.** ~~X, a corporation filing on a calendar year basis, changes to a fiscal year beginning September 1, 1993 and ending August 31, 1994. For the short taxable year, January 1, 1993, to August 31, 1993, X must make estimated payments of twenty-five percent (25%) of its minimum payment on April 15, 1993, and June 15, 1993. The remaining payment of fifty percent (50%) of the minimum payment, twenty-five percent (25%) for the third payment plus twenty-five percent (25%) for the fourth payment, is due on August 15, 1993, the fifteenth day of the last month of the short taxable year.~~ (3-20-97)

**b.** ~~If, in the example in Subsection 823.02.a., X does not meet the requirement to make estimated payments until June 15, 1993, X is required to pay fifty percent (50%) of the estimated tax, twenty-five percent (25%) for the third payment and twenty-five percent (25%) for the fourth payment. No payment for the first and second reporting period is required on August 15, 1993, the fifteenth day of the last month of the short taxable year.~~ (3-20-97)

**824. CORPORATE ESTIMATED PAYMENTS: MISCELLANEOUS PROVISIONS (RULE 824).**

Section 63-3036A, Idaho Code

**01. Unitary Groups Filing Group Returns.** (3-20-97)

**a.** Each corporation included in a group return that is required to make estimated payments separately computes its estimated tax. (3-20-97)

**b.** Estimated payments is to be made using the name and the federal employer identification number of the corporation whose name will be on the Idaho corporate income tax return. (3-20-97)

**02. S Corporations.** An S corporation is subject to Section 63-3036A, Idaho Code, limited to its tax on net recognized built-in gains, excess net passive income and from recapture of Idaho income tax credits. (3-29-10)

**03. Tax-Exempt Organizations.** A tax-exempt organization is subject to Section 63-3036A, Idaho Code, limited to its tax on unrelated business income. (3-20-97)

**825. CORPORATE ESTIMATED PAYMENTS: INTEREST ON UNDERPAYMENT (RULE 825).**

Section 63-3046A, Idaho Code

**01. In General.** If a taxpayer is required to pay estimated taxes as provided in Section 63-3036A, Idaho Code, and fails to pay the amount of estimated taxes due, interest is due on the underpaid estimated taxes. (5-3-03)

**02. Net Operating Loss and Capital Loss Carrybacks.** If the tax due for the taxable year is reduced after the application of a net operating loss carryback or a capital loss carryback, the interest on underpayment of estimated tax will not be recomputed. (5-3-03)

**826. -- 829. (RESERVED)**

**830. INFORMATION RETURNS (RULE 830).**

Section 63-3037, Idaho Code

**01. In General.** Information returns are not required to be filed with the Tax Commission except as follows: (3-20-97)

- a.** Form 1098, Mortgage Interest Statement, if the property was located in Idaho. (4-5-00)
- b.** Form 1099-A, Acquisition or Abandonment of Secured Property, if the property was located in Idaho. (4-5-00)
- c.** Form 1099-B, Proceeds From Broker and Barter Exchange Transactions, if the property was located in Idaho or the service was performed in Idaho. (4-5-00)
- d.** Form 1099-C, Cancellation of Debt, if the secured property was located in Idaho. (4-5-00)
- e.** Form 1099-MISC, Miscellaneous Income, if it was issued for transactions related to property located or utilized in Idaho or for services performed in Idaho. (4-5-00)
- f.** Form 1099-R, Distributions from Pensions, Annuities, Retirement or Profit-Sharing Plans, IRA's, Insurance Contracts, etc., if Idaho income tax was withheld. (4-5-00)
- g.** Form 1099-S, Proceeds From Real Estate Transactions, if it was issued for transactions related to property located in Idaho. (4-5-00)
- h.** Form W-2G, Certain Gambling Winnings, if the gambling took place in Idaho. (7-1-98)

**02. Submitting Returns.** Information returns must be submitted to the Tax Commission through electronic filing or on a paper copy of federal Form 1099. (4-7-11)

**03. Due Date of Information Returns.** Information returns are made on a calendar year basis. The due date for information returns submitted through electronic filing or on paper is the last day of February following the close of the calendar year. (4-7-11)

**04. Voluntary Withholding.** Each person who withholds Idaho income tax from amounts reported on information returns required by Section 63-3037, Idaho Code, must: (4-7-11)

- a.** Obtain an Idaho withholding account number as required by Rule 870 of these rules; and (4-7-11)
- b.** Submit an annual reconciliation return to the Tax Commission and comply with the requirements provided for filing of annual reconciliation returns as discussed in Rule 872 of these rules. The reconciliation return must report amounts paid during the preceding calendar year and reconcile the state income tax withheld with the tax remitted for the preceding calendar year. The reconciliation return must be filed on or before the last day of January. (3-26-19)

**831. -- 854. (RESERVED)**

**855. PERMANENT BUILDING FUND TAX (RULE 855).**

Sections 63-3082 through 63-3087, Idaho Code

~~**01. In General.** The permanent building fund tax is an excise tax of ten dollars (\$10) reportable on each income tax return required to be filed unless specifically exempt. The proceeds of this tax are credited to the Permanent Building Fund pursuant to Section 57-1110, Idaho Code. (3-20-97)~~

~~**02. Pass-Through Entities.** The permanent building fund tax does not apply to a pass-through entity if all the income or loss of the entity is distributed to or otherwise reported on the income tax return of another taxpayer. A pass-through entity that has Idaho taxable income or loss must pay the permanent building fund tax. (3-25-16)~~

**03. Corporations Included in a Group Return.** The permanent building fund tax applies to each member of a unitary group transacting business in Idaho, authorized to transact business in Idaho, or having income attributable to Idaho and included in a group return, except as provided in Subsection 855.05 of this rule. (3-30-07)

**04. Inactive or Nameholder Corporations.** An inactive or nameholder corporation that files Form 41 to pay the twenty dollar (\$20) minimum tax must pay the permanent building fund tax. (3-20-14)

**05. Taxpayers Protected Under Public Law 86-272.** The permanent building fund tax does not apply to a taxpayer whose Idaho business activities fall under the protection of Public Law 86-272, since the taxpayer is exempt from the tax imposed under the Idaho Income Tax Act and is not required to file an income tax return. (3-20-14)

~~**06. Entities That Pay the Tax for Individuals Under Section 63-3022L, Idaho Code.** When a pass-through entity pays the Idaho income tax on a composite return for an individual shareholder, partner, member, or beneficiary on his share of income from the entity, the entity must pay the permanent building fund tax for each individual filing as part of the composite return. When a pass-through entity pays backup withholding for individuals, the permanent building fund tax will be paid by each individual when they file their return. If an individual has tax paid by more than one (1) entity for a taxable year, each entity is required to pay the permanent building fund tax for the individual. Proration of the permanent building fund tax is not allowed for an individual who has tax paid by multiple entities for a taxable year. (3-20-14)~~

**856. -- 859. (RESERVED)**

**860. DONATIONS TO TRUST ACCOUNTS (RULE 860).**

Sections 63-3067A, 63-3067B, and 63-3067D, Idaho Code. A donation to a trust account may not be withdrawn or reduced once the return or amended return on which it was made is filed. (4-7-11)

~~**861. -- 869. (RESERVED)**~~

**870. REQUIREMENTS OF AN IDAHO WITHHOLDING ACCOUNT NUMBER (RULE 870).**

Sections 63-3035 and 63-3036, Idaho Code

~~**01. Idaho Withholding Account Number Required.** An Idaho withholding account number is required of: (3-20-97)~~

~~**a.** Each employer who pays salaries, wages, or other compensation to an employee for services performed in Idaho, including agricultural, household, and domestic employers; and (3-20-97)~~

~~**b.** Each person who withholds Idaho income tax. (3-30-07)~~

**02. Idaho Withholding Account Numbers Are Not Transferable.** If a business is sold, the new employer is to apply for a new withholding account number and file separate returns and W-2s. If a change in the form of doing business requires a new federal employer identification number, the new entity is to apply for a new withholding account number. Neither entity should report wages paid by the other entity, nor use the other entity's withholding account number. (3-20-97)

**871. STATE INCOME TAX WITHHOLDING REQUIRED (RULE 871).**

Sections 63-3035 and 63-3036, Idaho Code

~~**01. Employers Other Than Farmers.** An employer is required to withhold from all salaries, wages, tips, bonuses, or other compensation paid to an employee for services performed in Idaho if: (7-1-99)~~

~~**a.** The employer is required to withhold for federal purposes; and (7-1-99)~~

~~**b.** The employee is an Idaho resident; or the employee is a nonresident and compensation of one thousand dollars (\$1,000) or more will be paid during a calendar year to the nonresident employee for services performed in Idaho. (7-1-99)~~

~~**02. Farmer Employers.** An employer who is a farmer is required to withhold from all salaries, wages, tips, bonuses, or other compensation paid to an employee for services performed in Idaho if: (3-30-01)~~

~~**a.** The farmer employer is required to withhold for federal purposes; and (3-30-01)~~

~~**b.** Compensation of one thousand dollars (\$1,000) or more will be paid during a calendar year to the agricultural employee. (3-30-01)~~

**03. Services Performed Within and Without Idaho.** An employer is required to withhold only on the portion of the employee's total compensation that is reasonably attributable to services performed in Idaho regardless of his post of duty. Compensation may be allocated to Idaho based on workdays, hours, mileage, or commissions. (7-1-99)

**04. Exceptions to Withholding Requirements.** Withholding is not required if: (3-20-97)

**a.** The salaries, wages, tips, bonuses, and other compensation paid by an employer are for services performed wholly outside Idaho regardless of the residency or domicile of either the employer or employee. (3-20-97)

**b.** The compensation is paid by the United States Armed Forces to a nonresident serving on active duty in Idaho; (3-20-97)

**c.** The compensation is paid to an interstate transportation employee of a rail carrier covered by Title 49, Section 11502, United States Code, who is a nonresident of Idaho; or (7-1-99)

**d.** The compensation is paid to an interstate transportation employee of a motor carrier covered by Title 49, Section 14503, United States Code, who is a nonresident of Idaho; or (7-1-99)

**e.** The compensation is paid to an employee of an interstate air carrier covered by Title 49, Section 40116, United States Code, who is a nonresident of Idaho and earns fifty percent (50%) or less of his compensation in Idaho; or (7-1-99)

**f.** The compensation is paid to a master or seaman on a vessel in the foreign, coastwise, intercoastal, interstate, or noncontiguous trade or to an individual employed on a fishing vessel or any fish processing vessel covered by Title 46, Section 11108, United States Code; or (4-6-05)

**g.** The compensation is exempt from federal withholding. (7-1-99)



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

Sections 63-3035 and 63-3036, Idaho Code

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

**a.** In General. An employer 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. (3-20-14)

**b. Semimonthly Filers. (4-11-15)**

**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, will remit the tax withheld based on semimonthly withholding periods. The first semimonthly withholding period begins on the first day of the month and ends on the 15th day of the same month with payment made no later than the 20th day of the same month. The second period begins on the 16th day of the month and ends on the last day of the same month with payment made no later than the fifth day of the following month. (4-11-15)

**ii. Threshold amounts:**

Withholding Periods Beginning	Monthly Threshold Amounts	Annual Threshold Amounts
On or After July 1, 2005	\$20,000	\$240,000
On or After July 1, 2019	\$25,000	\$300,000

(3-20-20)

**iii.** An employer who meets the threshold amounts provided in Section 63-3035, Idaho Code, and listed in Subparagraph 872.01.b.ii. of this rule, but only has one (1) monthly pay period, may request approval by the Tax Commission to pay and report monthly. The request should include verification of monthly payroll. (3-29-17)

**c.** Farmer-Employers. Generally an employer who is a farmer will remit state income tax withheld on or before the last day of January. However, an employer who is a farmer 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. (3-20-14)

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

**a.** In General. An employer 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 will: (3-20-14)

**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 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. (3-20-14)

**c.** Zero Tax Returns. For reporting periods in which the employer had no payroll or withheld no tax, the annual reconciliation return must be completed and filed by the due date. (3-20-14)

**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 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 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. (3-20-14)

**b.** The employer must file the annual reconciliation return within one (1) month of the due date. The tax paid with the extension request must be shown on the payment line of the return. Interest from the due date applies to any additional tax due. (3-20-14)

**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 will be filed using the proper forms as prescribed by the Tax Commission. The forms 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. (3-20-14)

### **873. EMPLOYEE'S WITHHOLDING ALLOWANCE CERTIFICATES (RULE 873).**

Section 63-3035, Idaho Code

**01. Verification.** The Tax Commission may request verification of the marital status or withholding allowances claimed by an employee on federal Form W-4. If the employee fails to verify the claimed marital status or withholding allowances, a Notice of Deficiency as provided by Section 63-3045, Idaho Code, may be issued. If a Notice of Deficiency is issued but is not protested or is upheld on appeal, the Tax Commission will issue an order specifying the marital status and maximum number of withholding allowances the employee is allowed for Idaho withholding purposes. (4-5-00)

**02. Notification.** The Tax Commission is to notify the employer of the order. The order is effective immediately on receipt by the employer and is to remain in effect the rest of the calendar year, unless the employee files federal Form W-4 claiming fewer allowances than ordered. The employer is liable to the Tax Commission for any deficiencies that result from withholding in excess of the maximum number of withholding allowances specified in the most recent Tax Commission order. (4-5-00)

**03. Petition for Changes.** An employee subject to a Tax Commission order may petition the Tax Commission for a change to the order. If the employee establishes that a material change of circumstances has occurred, the Tax Commission will issue a new order and notify the employer. The determination of the Tax Commission on any change to the order is final. (4-5-00)

### **874. EMPLOYEE'S WAGE AND TAX STATEMENTS (RULE 874).**

Sections 63-3035 and 63-3036, Idaho Code

**01. Form and Information Required.** Federal Form W-2 (W-2) or a form of similar size and design may be used. In addition to the information required by the Internal Revenue Code, total Idaho wages paid, Idaho income tax withheld, Idaho withholding permit number, and the name of the state must be shown in the appropriate boxes. Incomplete, incorrect or altered forms are not acceptable and may be returned to the employer for correction. (4-7-11)

**02. Furnishing Forms W-2 to Employees.** The employer must furnish each employee a W-2 before February 1, or at the request of the employee within thirty (30) days after termination of his employment. (4-7-11)

**03. Filing Forms W-2 With the Tax Commission.** On or before the last day of January, each employer must file with the Tax Commission a state copy of the W-2 for each employee to whom Idaho taxable wages were paid,

regardless of whether Idaho income tax was withheld. If the employer had no employees and subsequently did not pay wages or withhold tax, no W-2s are required. (3-29-17)

**04. Corrected Forms W-2.** If a corrected W-2 is filed with the Internal Revenue Service, the W-2c must be filed with the Tax Commission. (4-6-05)

**05. Employers With Fifty or More Idaho Employees.** Each employer with fifty (50) or more Idaho employees who is required to file W-2s electronically by Section 6011, Internal Revenue Code, must file through electronic filing with Idaho. In addition to the information required by the Internal Revenue Code, the electronic filing must also include the employer's Idaho withholding account number, Idaho wages, and Idaho withholding. Employers who are required to file electronically but fail to do so are subject to the provisions of Section 63-3046(e)(1), Idaho Code, and treated as if no W-2s were filed. (5-8-09)

**06. Services Performed Within and Without Idaho.** If services are performed within and without Idaho, the state wages shown on the W-2 furnished to the employee must include the portion of the employee's total wages reasonably attributed to services performed within Idaho as determined using the calculations in Rule 270 of these rules. (5-8-09)

**07. Extension of Time to File Form W-2.** The Tax Commission may allow a one (1) month extension of time to file the W-2s. (4-6-05)

**a.** The employer must file a written request by the due date of the W-2s that identifies the reason for the extension. (4-6-05)

**b.** The employer must file the W-2s within one (1) month of the due date. A penalty of two dollars (\$2) per W-2 per month not filed may be applied if the W-2s are not submitted by the due date. (4-6-05)

**875. -- 876. (RESERVED)**

**877. BACKUP WITHHOLDING BY PASS-THROUGH ENTITIES (RULE 877).**  
Sections 63-3022L and 63-3036B, Idaho Code

**01. In General.** A pass-through entity that is transacting business in Idaho or an estate or trust that has income taxable in Idaho must withhold Idaho income tax from the owner's or beneficiary's share of income and guaranteed payments from the pass-through entity that is required to be included in the individual's Idaho taxable income unless exempt from backup withholding by Section 63-3036B, Idaho Code, or this rule. For purposes of this rule, pass-through entity means "pass-through entity" as defined in Section 63-3006C, Idaho Code. The provisions of this rule do not affect the withholding requirements set forth in Sections 63-3035, 63-3035A, or 63-3036, Idaho Code, and related rules. (4-4-13)

**02. Exceptions to Backup Withholding.** Backup withholding by a pass-through entity is not required on the income of the following pass-through owners and beneficiaries: (2-27-12)

**a.** Owners and beneficiaries who are not natural persons, including corporations, partnerships, trusts, and estates. (4-7-11)

**b.** Unit holders of a publicly traded partnership as defined by Section 7404(b), Internal Revenue Code, if the publicly traded partnership: (4-7-11)

**i.** Is treated as a partnership for purposes of the Internal Revenue Code; and (4-7-11)

**ii.** Has agreed to file an annual information return. The information return must be in the form of a schedule included with the partnership's Idaho Partnership Return of Income reporting the name, address, taxpayer identification number, and other information requested by the Tax Commission of each unit holder with a distributive share of partnership income in Idaho in excess of five hundred dollars (\$500) for the taxable year. (2-27-12)

**c.** Resident individuals and part-year resident individuals who have income other than from a pass-through entity. (2-27-12)

**d.** Nonresident individuals if: (4-7-11)

i. The pass-through entity has reported and paid the tax relating to the individual on a composite return pursuant to Section 63-3022L, Idaho Code. (4-4-13)

ii. Such individual's share of income and guaranteed payments of the pass-through entity from Idaho sources is less than one thousand dollars (\$1,000) for the taxable year in which the income is subject to tax; (4-4-13)

iii. The income is subject to withholding under Section 63-3035 or 63-3036, Idaho Code; or (4-4-13)

iv. The individual has signed and the pass-through entity has approved an Idaho nonresident owner agreement. (4-4-13)

**03. Idaho Nonresident Owner Agreement.** When an individual signs an Idaho nonresident owner agreement, he agrees to file and pay tax on his share of Idaho income from a pass-through entity. The signed agreement must be the proper form prescribed by the Tax Commission and must be submitted to the pass-through entity each year. The pass-through entity must sign and approve the nonresident owner agreement for it to be valid. Their approval will signify their acknowledgment that they are liable for any tax due at the corporate rate if the individual fails to file a return as agreed. If the pass-through entity does not approve the nonresident owner agreement, the pass-through entity must withhold or include the individual in the composite return. The pass-through entity must retain the forms for three years following the end of the taxable year for which it is to apply. (4-4-13)

**04. Payment of Backup Withholding.** (4-7-11)

**a.** The pass-through entity must withhold amounts from the pass-through income of nonresident individuals at the highest marginal rate applicable for the taxable year under Section 63-3024, Idaho Code. The amount withheld for a taxable year must be remitted to the Tax Commission annually on or before the fifteen day of the fourth month following the end of the taxable year, unless one of the exceptions under Subsection 877.02 of this rule apply to the owner or beneficiary. The amount withheld must be remitted on the appropriate return as required by the Tax Commission. (2-27-12)

**b.** Amounts remitted as backup withholding for a taxable year in accordance with the provisions of this rule will be considered to be in part payment of the tax imposed on such owner or beneficiary for his taxable year in which the pass-through entity's taxable year ends. (2-27-12)

**05. Backup Withholding Returns.** A reconciliation schedule must be included with the pass-through entity's Idaho income tax return. Returns submitted to the Tax Commission reporting amounts withheld as required by Section 63-3036B, Idaho Code, must include the following information: (2-27-12)

**a.** The amount of income described in Section 63-3022L(2), Idaho Code, by owner or beneficiary; (2-27-12)

**b.** The amount of tax withheld; (4-7-11)

**c.** Name, address, filing option, and social security number of each owner or beneficiary; (4-4-13)

**d.** The pass-through entity's name, and federal employer identification number. (2-27-12)

**06. Failure to File Returns or Remit Backup Withholding.** Returns that fail to meet the requirements of this rule are invalid and may be returned to the pass-through entity to be refiled. Failure to file a valid return or remit the proper amount of backup withholding by the due date may cause interest and penalties to be imposed. (2-27-12)

**878. -- 879. (RESERVED)**

**880. CREDITS AND REFUNDS (RULE 880).**

Section 63-3072, Idaho Code

- 01. Overpayment.** The term overpayment includes: (3-20-97)
- a.** A voluntary and unrequested payment greater than an actual tax liability. (3-20-97)
  - b.** An excessive amount that an employer withholds pursuant to Sections 63-3035 and 63-3036, Idaho Code. (3-20-97)
  - c.** An excessive amount that a pass-through entity withholds pursuant to Section 63-3036B, Idaho Code. (3-20-14)
  - d.** All amounts erroneously or illegally assessed or collected. (3-20-97)
  - e.** The term overpayment does not include an amount paid pursuant to a final determination of tax, including a compromise and closing agreement, decision of the Tax Commission, decision of the Board of Tax Appeals, or final court judgment. (3-20-97)
- 02. Requirements of a Valid Refund Claim.** Before the Tax Commission can credit or refund an overpayment, the taxpayer making the claim must establish both of the following: (4-2-08)
- a.** The basis for the credit or refund claim, and (4-2-08)
  - b.** The amount of the overpayment. (4-2-08)
- 03. Timely Claim Required for Refund.** (3-20-97)
- a.** The Tax Commission may not credit or refund an overpayment after the expiration of the period of limitations unless the taxpayer filed a claim before the expiration of the period. (3-20-97)
  - b.** When an adjustment to the taxpayer's federal return affects the calculation or application of an Idaho net operating loss, capital loss, or Idaho credit in a year otherwise closed by the period of limitations, the taxpayer has one (1) year from the date of the final determination to file a claim for refund. (4-2-08)
  - c.** If a claim for credit or refund relates to an overpayment attributable to an Idaho net operating loss carryback incurred in taxable years beginning on and after January 1, 2013, an amended return carrying the loss back must be filed within one (1) year of the end of the taxable year of the net operating loss that results in such carryback. (3-20-14)
- 04. Amended Returns Required as Refund Claims.** The claim for a credit or refund must be made on an amended Idaho income tax return that is properly signed and includes an explanation of each legal or factual basis in sufficient detail to inform the Tax Commission of the reason for the claim. By signing the amended return the taxpayer is declaring that the claim for refund is true and correct to the best of his knowledge and belief and is made under the penalties of perjury. (3-20-14)
- 05. Closed Issues.** The Tax Commission will deny a credit or refund claim for a taxable year for which the Tax Commission has issued a Notice of Deficiency, unless the taxpayer shows that the changes on the amended return are unrelated to the adjustments in the Notice of Deficiency or that the changes result from a final federal determination. (3-20-14)
- 06. Limitations on Refunds of Withholding and Estimated Payments.** As provided by Section 63-3072(c), Idaho Code, the Tax Commission may not refund taxes withheld from wages unless the taxpayer files a return within three (3) years after the due date. The Tax Commission may not refund any payment received with an extension of time to file or with a tentative return, including quarterly estimated payments, unless the taxpayer makes a claim for a refund within three (3) years of the due date of the return. However, when an individual is in a combat zone and entitled

to an extension of time by Section 7508, Internal Revenue Code, the number of days disregarded under such section will be added to the three (3) year period for allowing refunds of amounts withheld or paid as estimated payments.

(2-27-12)

**07. Reduction or Denial of Refund Claims.** If the Tax Commission determines that a refund claim is in error, the Tax Commission will deny the claim in whole or part. Unless the denial results from a mathematical error by the claimant, the Tax Commission will give notice of the denial by a Notice of Deficiency in the manner required by Section 63-3045, Idaho Code, and related rules. The protest and appeal process that applies to a Notice of Deficiency also applies to the denial or reduction of a refund. See Section 63-3045A, Idaho Code, for information on mathematical errors.

(3-20-14)

**08. Amended Federal Return.** Filing a claim with the Internal Revenue Service to reduce taxable income does not extend the Idaho period of limitations for claiming a refund or credit of tax. If the statute of limitations is about to expire on a taxpayer's Idaho return for which an issue is pending on his federal return or return filed with another state, the taxpayer should amend his Idaho return. He should clearly identify the amended return as a protective claim for refund. The taxpayer must notify the Tax Commission of the final resolution.

(7-1-98)

**09. Combined Reports -- Final Federal Determination and Change of Filing Method.** If the Idaho period of limitations is open due to a final federal determination, a corporate taxpayer may not adjust its Idaho return to include a previously omitted corporation or to exclude any corporation previously included in a combined report.

(3-20-97)

**10. Duplicate Returns.** If a return is filed pursuant to Section 63-217(1)(b), Idaho Code, where the taxpayer establishes by competent evidence that the return was deposited in the United States mail or with a qualifying private delivery service (See IDAPA 35.02.01, "Tax Commission Administration and Enforcement Rules," Rule 010) on or before the date for filing and the Tax Commission has notified the taxpayer that it has not received the return, the taxpayer must submit a duplicate return within fifteen (15) days of such notification for the newly filed return to qualify as a duplicate return. The period of limitations for a duplicate return is the later of one (1) year from the filing of the duplicate return or the date provided for in Section 63-3072(b), Idaho Code.

(3-20-14)

**881. -- 884. (RESERVED)**

**885. INTEREST ON REFUNDS (RULE 885).**

Sections 63-3073 and 63-3045, Idaho Code

~~**01. In General.** Taxpayers will receive interest on refunds of all amounts illegally or erroneously assessed or collected. No interest is payable on refunds of amounts that are voluntary or unrequested payments exceeding the tax due.~~

~~(3-20-97)~~

**02. Computation.** Except as provided in Subsection 885.03, the Tax Commission is to compute interest on a net refund as follows:

(7-1-99)

~~**a.** Taxes erroneously or illegally assessed or collected. Interest is to be computed from the date the excess amount was received or the due date for filing the return to which the amount relates, whichever is later.~~

~~(3-20-97)~~

**b.** Refunds of income tax withheld. The Tax Commission will pay interest on refunds of withholding if the refund is paid more than sixty (60) days after the due date of the income tax return or the date it was filed, whichever is later. For purposes of this rule, the refund is considered paid on the date it is postmarked. If a taxpayer unduly delays the processing of his refund by failing to respond promptly to requests for information or in any other way, the Tax Commission may deduct time attributable to the delay from the total processing time to determine whether interest is to be paid and from what date. Unless reasonable cause is established, undue delay occurs if the taxpayer's delay is more than sixty (60) days. Pursuant to this subsection, interest is computed from the due date, or extended due date, of the return.

(3-20-97)

**c.** Tentative payments. The Tax Commission may not pay interest on a refund resulting from an estimated or tentative payment.

(3-20-97)

**03. Refunds from Net Operating Loss and Capital Loss Carrybacks.** Refunds from net operating loss and capital loss carrybacks include refunds from credits carried to years other than the year to which the net operating loss or capital loss deduction applies. Interest on these refunds is computed from the last day of the loss year.(7-1-99)

**886. -- 889. (RESERVED)**

**890. NOTICE OF ADJUSTMENT OF FEDERAL TAX LIABILITY (RULE 890).**

Section 63-3069, Idaho Code

~~**01. Final Determination.** The term final determination as used in Section 63-3069, Idaho Code means final federal determination as defined in Section 63-3068(f), Idaho Code. (3-20-97)~~

**02. Written Notice.** (3-20-97)

**a.** Written notice will include copies of all Revenue Agents' reports, and any other documents and schedules required to clarify the adjustments to taxable income. If the final determination results in a refund of state taxes, an amended Idaho income tax return must accompany the written notice to be a valid claim for refund. (3-20-97)

**b.** Written notice included with an income tax return for a year or years other than the year subject to the federal adjustment does not constitute the required notification. (3-20-97)

~~**03. Immediate Notification.** The Tax Commission may impose negligence penalties on any additional tax due if the taxpayer has not provided the written notice within one hundred twenty (120) days of the final determination. (3-26-19)~~

**891. NOTICE OF ADJUSTMENT OF STATE OR TERRITORY TAX LIABILITY (RULE 891).**

Sections 63-3069 and 63-3069A, Idaho Code

**01. Final Determination.** The term final determination of any deficiency or refund of income tax due to another state or territory as used in Section 63-3069, Idaho Code, means the final resolution of all issues that were adjusted by the other state or territory. (3-30-01)

**02. Written Notice.** (3-30-01)

**a.** Written notice is to include copies of all reports issued by the other state or territory, and any other documents and schedules required to clarify the adjustments to taxable income of the state or territory. If the final determination results in a refund of Idaho taxes, an amended Idaho income tax return must accompany the written notice to be a valid claim for refund. (3-30-01)

**b.** Written notice included with an income tax return for a year or years other than the year subject to the adjustment by the state or territory does not constitute the required notification. (3-30-01)

~~**03. Immediate Notification.** The Tax Commission may impose negligence penalties on any additional tax due if the taxpayer has not provided the written notice within one hundred twenty (120) days of the final determination. (3-26-19)~~

**892. -- 894. (RESERVED)**



**895. PERIOD OF LIMITATION ON ASSESSMENT AND COLLECTION OF TAX (RULE 895).**

Sections 63-3068 and 63-3069A, Idaho Code

**01. Federal Determination.** The additional one (1) year period of limitation provided in Sections 63-3068(f) and 63-3068(j), Idaho Code, does not begin to run if the final federal determination is delivered to the Tax Commission by someone other than the taxpayer or the taxpayer's representative. The Internal Revenue Service and other taxing agencies are not representatives of taxpayers. (3-20-97)

**02. State or Territory Determination.** The additional one (1) year period of limitation provided in Section 63-3069A(2)(b), Idaho Code, does not begin to run if the final determination of income tax due to another state or territory is delivered to the Tax Commission by someone other than the taxpayer or the taxpayer's representative. Taxing agencies of other states or territories are not representatives of taxpayers. (3-30-01)

**03. Protest of a Notice of Deficiency.** If a taxpayer protests a Notice of Deficiency, the expiration of the period of limitations provided in Section 63-3068, Idaho Code, is suspended. (3-20-97)

**04. Waiver of the Period of Limitation.** If a taxpayer executes a waiver to extend the period of limitation, the waiver will state the taxpayer's name as shown on the tax return. If a group return is filed, the waiver applies to each corporation included in the combined group. (3-20-97)

**05. Duplicate Returns.** If a return is filed pursuant to Section 63-217(1)(b), Idaho Code, where the taxpayer establishes by competent evidence that the return was deposited in the United States mail or with a qualifying private delivery service (See IDAPA 35.02.01, "Tax Commission Administration and Enforcement Rules," Rule 010) on or before the date for filing and the Tax Commission has notified the taxpayer that it has not received the return, the taxpayer is to submit a duplicate return within fifteen (15) days of such notification for the newly filed return to qualify as a duplicate return. The period of limitations for a duplicate return is the later of one (1) year from the filing of the duplicate return or the date provided for in Section 63-3068, Idaho Code. (4-6-05)

**896. REQUEST FOR PROMPT ACTION BY THE TAX COMMISSION (RULE 896).**

Section 63-3068(e), Idaho Code

~~**01. In General.** A request for prompt action may be made pursuant to Section 63-3068(e), Idaho Code, for an income tax return that is required to be filed for a decedent or an estate of a decedent. The request does not apply to the estate tax imposed by Chapter 4, Title 14, Idaho Code. (7-1-98)~~

**02. Requirements of a Valid Request for Prompt Action.** The personal representative, executor, administrator, or other fiduciary representing the estate of a decedent is to file the request for prompt action in writing with the Tax Commission. The request must meet the following qualifications: (7-1-98)

- a.** It must be filed after the applicable return has been filed; (7-1-98)
- b.** It must be filed separately from any other document; (7-1-98)
- c.** It must identify the taxpayer by name and identification number and the taxable periods for which the prompt action is requested; and (7-1-98)
- d.** It must clearly state that it is a request for prompt action pursuant to Section 63-3068(e), Idaho Code. (7-1-98)

**03. Applicable Returns.** A request for prompt action does not apply to any return filed after the request has been filed. The request applies only to returns reflecting income earned or other activities and transactions occurring during the lifetime of the decedent or by his estate during the period of administration. (7-1-98)

**897. -- 899. (RESERVED)**

**900. RESPONSIBILITY FOR PAYMENT OF CORPORATE TAXES AND PENALTIES (RULE 900).**

Section 63-3078, Idaho Code. The Tax Commission or its delegate may issue a jeopardy assessment or take any other action necessary to assess and collect the amounts due from liable individuals. The action may include the filing of a lien on the property of the individual found liable, or seizure and sale of his property or any other means of collection. The liable individuals are to have the remedies provided in Sections 63-3045, 63-3049, 63-3065, and 63-3074, Idaho Code. (3-20-97)

**901. -- 939. (RESERVED)****940. IDAHO SMALL EMPLOYER INCENTIVE ACT OF 2005 AS MODIFIED BY 2006 LEGISLATION: DEFINITIONS (RULE 940).**

Title 63, Chapter 44, Idaho Code. For purposes of administering the Idaho Small Employer Incentive Act of 2005, as modified by 2006 legislation, and Rules 940 through 946 of these rules, the following definitions apply: (3-30-07)

**01. Buildings and Structural Components.** Buildings and structural components means buildings and structural components of buildings as defined in Federal Treasury Regulation Section 1.48-1 for Internal Revenue Code Section 48 repealed by Public Law 101-508. (3-30-07)

**02. New Plant and Building Facilities.** New plant and building facilities are facilities where employees are physically employed. (3-30-07)

**03. Investment in New Plant.** Investment in new plant means new plant and building facilities: (3-30-07)

**a.** That are constructed or erected by the taxpayer, or (3-30-07)

**b.** That are acquired by the taxpayer and whose original use begins with the taxpayer after such acquisition. Original use means the first use to which the property is put, whether or not such use corresponds to the use of such property by the taxpayer. Property used by the taxpayer prior to its acquisition does not qualify as new plant. (3-30-07)

**c.** That qualify for the investment tax credit under Section 63-3029B, Idaho Code, or is a building or structural components of buildings. (3-30-07)

**04. Making Capital Investments.** The date capital investments are considered made will be determined in the same manner as the date assets are considered placed in service pursuant to the federal treasury regulations. (3-30-07)

**05. New Employee.** A new employee cannot be created by reorganizing the business in such a manner that the employee is reassigned to working in the project site instead of outside the project site. An employee within Idaho transferred to a qualifying position within the project site may qualify as a new employee if his previous position is filled by another employee creating a net new job in Idaho. An employee working outside of Idaho and transferred to a qualifying position within the project site may also qualify as a new employee. (3-30-07)

**06. Project Period.** The project period is a period of time that begins and ends as follows: (3-30-07)

**a.** The project period may begin on one (1) of the following dates, but not prior to January 1, 2006: (3-29-10)

**i.** The date of a physical change to the project site; or (3-30-07)

**ii.** The date new employees begin providing personal services at the project site. (3-30-07)

**b.** The project period ends at the earliest of: (3-29-10)

**i.** The conclusion of the project, (3-29-10)

**900. RESPONSIBILITY FOR PAYMENT OF CORPORATE TAXES AND PENALTIES (RULE 900).**

Section 63-3078, Idaho Code. The Tax Commission or its delegate may issue a jeopardy assessment or take any other action necessary to assess and collect the amounts due from liable individuals. The action may include the filing of a lien on the property of the individual found liable, or seizure and sale of his property or any other means of collection. The liable individuals are to have the remedies provided in Sections 63-3045, 63-3049, 63-3065, and 63-3074, Idaho Code. (3-20-97)

**901. -- 939. (RESERVED)****940. IDAHO SMALL EMPLOYER INCENTIVE ACT OF 2005 AS MODIFIED BY 2006 LEGISLATION: DEFINITIONS (RULE 940).**

Title 63, Chapter 44, Idaho Code. For purposes of administering the Idaho Small Employer Incentive Act of 2005, as modified by 2006 legislation, and Rules 940 through 946 of these rules, the following definitions apply: (3-30-07)

**01. Buildings and Structural Components.** Buildings and structural components means buildings and structural components of buildings as defined in Federal Treasury Regulation Section 1.48-1 for Internal Revenue Code Section 48 repealed by Public Law 101-508. (3-30-07)

**02. New Plant and Building Facilities.** New plant and building facilities are facilities where employees are physically employed. (3-30-07)

**03. Investment in New Plant.** Investment in new plant means new plant and building facilities: (3-30-07)

**a.** That are constructed or erected by the taxpayer, or (3-30-07)

**b.** That are acquired by the taxpayer and whose original use begins with the taxpayer after such acquisition. Original use means the first use to which the property is put, whether or not such use corresponds to the use of such property by the taxpayer. Property used by the taxpayer prior to its acquisition does not qualify as new plant. (3-30-07)

**c.** That qualify for the investment tax credit under Section 63-3029B, Idaho Code, or is a building or structural components of buildings. (3-30-07)

**04. Making Capital Investments.** The date capital investments are considered made will be determined in the same manner as the date assets are considered placed in service pursuant to the federal treasury regulations. (3-30-07)

**05. New Employee.** A new employee cannot be created by reorganizing the business in such a manner that the employee is reassigned to working in the project site instead of outside the project site. An employee within Idaho transferred to a qualifying position within the project site may qualify as a new employee if his previous position is filled by another employee creating a net new job in Idaho. An employee working outside of Idaho and transferred to a qualifying position within the project site may also qualify as a new employee. (3-30-07)

**06. Project Period.** The project period is a period of time that begins and ends as follows: (3-30-07)

**a.** The project period may begin on one (1) of the following dates, but not prior to January 1, 2006: (3-29-10)

**i.** The date of a physical change to the project site; or (3-30-07)

**ii.** The date new employees begin providing personal services at the project site. (3-30-07)

**b.** The project period ends at the earliest of: (3-29-10)

**i.** The conclusion of the project, (3-29-10)

- ii. Ten (10) years after the beginning of the project; or (3-29-10)
- iii. December 31, 2020. (3-29-10)

**07. Project Site.** The project site may include one (1) location or more than one (1) location in Idaho. However, if more than one (1) location in Idaho is used, eighty percent (80%) or more of the investment required in the tax incentive criteria is to be located at one (1) contiguous site. (3-30-07)

**08. Small Employer Investment Tax Credit.** Small employer investment tax credit means the additional income tax credit allowed by Section 63-4403, Idaho Code. (3-30-07)

**09. Small Employer New Jobs Tax Credit.** Small employer new jobs tax credit means the additional income tax credit for new jobs allowed by Section 63-4405, Idaho Code. (3-30-07)

**10. Small Employer Real Property Improvement Tax Credit.** Small employer real property improvement tax credit means the real property improvement tax credit allowed by Section 63-4404, Idaho Code. (3-30-07)

**11. Small Employer Tax Incentive Criteria.** Small employer tax incentive criteria means the tax incentive criteria defined in Section 63-4402(2)(j), Idaho Code. See Rule 942 of these rules for more information. (3-30-07)

**12. Small Employer Tax Incentives.** Small employer tax incentives means the tax incentives allowed by Title 63, Chapter 44, Idaho Code. (3-30-07)

**941. IDAHO SMALL EMPLOYER INCENTIVE ACT OF 2005 AS MODIFIED BY 2006 LEGISLATION: IN GENERAL (RULE 941).**

Sections 63-4401 and 63-4406, Idaho Code

**01. Pass-Through Entities.** The income tax credits may be earned by a partnership, S corporation, estate, or trust and passed through to the partner, shareholder, or beneficiary. See Rule 785 of these rules for the method of attributing the credits, for pass-through entities paying tax, and the application of limitations on pass-through credits. (3-30-07)

**02. Reorganizations, Mergers and Liquidations.** The small employer investment tax credit and real property improvement tax credits are subject to recapture in accordance with Section 47, Internal Revenue Code, as in effect prior to the enactment of Public Law 101-508. Exceptions included in Section 47(b), Internal Revenue Code, to the general recapture rules, including a mere change in the form of conducting the trade or business and transactions to which Section 381(a), Internal Revenue Code, applies will not cause recapture to occur so long as the property is retained in such trade or business as qualified investment in new plant and the taxpayer retains a substantial interest in such trade or business. To the extent that provisions of the Internal Revenue Code allow an acquiring taxpayer to succeed to and take into account unused investment credits of the distributor or transferor taxpayer, such provisions apply to the acquiring taxpayer with regard to any unused Idaho small employer investment tax credits and real property improvement tax credits. See Rule 946 of these rules for information related to the recapture required by an acquiring taxpayer. (3-30-07)

**03. Relocations.** The relocation from one (1) project site to a new project site within the state may not create new eligibility for the current or any succeeding business entity. (3-30-07)

**04. Unitary Taxpayers.** A corporation included as a member of a unitary group may elect to share the small employer investment tax credit, real property improvement tax credit, and new jobs tax credit it earns with other members of the unitary group. Before the corporation may share the credit, it must claim the credit to the extent allowable against its tax liability. The credit available to be shared is the amount of each credit carryover and credit earned for the taxable year that exceeds the limitations provided for each credit. The limitation is applied against the tax computed for the corporation that claims the credit. Credit shared with another member of the unitary group reduces the carryforward. (3-30-07)

**942. IDAHO SMALL EMPLOYER INCENTIVE ACT OF 2005 AS MODIFIED BY 2006 LEGISLATION: SMALL EMPLOYER TAX INCENTIVE CRITERIA (RULE 942).**

Section 63-4402, Idaho Code

**01. In General.** The small employer tax incentive criteria are the minimum requirements a taxpayer must meet in order to be eligible for small employer tax incentives. To meet the small employer tax incentive criteria, a taxpayer must satisfy the following requirements at the project site, during the project period: (3-30-07)

**a.** Making capital investment in new plant and building facilities totaling five hundred thousand dollars (\$500,000) or more; (3-30-07)

**b.** Increasing employment by at least ten (10) new employees who meet the requirements of Section 63-4402(2)(j)(ii)(1), Idaho Code; (3-30-07)

**c.** Employment increases more than the ten (10) new employees described in Paragraph 942.01.b. of this rule will meet the requirements of Section 63-4402(2)(j)(ii)(2), Idaho Code; and (3-30-07)

**d.** Once the increase in employment has been reached, maintaining that increased employment in Idaho for the remainder of the project period. (3-30-07)

**02. Certification.** A taxpayer is to certify that he has met, or will meet, the small employer tax incentive criteria before he can claim any of the small employer tax incentives. Certification is accomplished by filing the applicable form as prescribed by the Tax Commission. The certification form includes the following information and be filed with the Tax Commission prior to claiming any of the small employer tax incentives: (3-30-07)

**a.** A description of the qualifying project; (3-30-07)

**b.** The estimated or actual start date of the project; (3-30-07)

**c.** The estimated or actual end date of the project; (3-30-07)

**d.** The location of the project site or sites; (3-30-07)

**e.** The estimated or actual number of new jobs created during the project period; and (3-30-07)

**f.** The estimated or actual cost of capital investment in new plant and building facilities for each year in the project period. (3-30-07)

**03. Copy of Certification Form Required.** A copy of the certification form will be attached to the Idaho income tax return for each taxable year that a small employer income tax incentive is claimed or carried over. (3-30-07)

**943. IDAHO SMALL EMPLOYER INCENTIVE ACT OF 2005 AS MODIFIED BY 2006 LEGISLATION: SMALL EMPLOYER INVESTMENT TAX CREDIT (RULE 943).**

Sections 63-4403 and 63-4406, Idaho Code

**01. Credit Allowed.** (3-30-07)

~~**a.** The small employer investment tax credit allowed by Section 63-4403, Idaho Code, may be earned during taxable years beginning on or after January 1, 2006 and before December 31, 2020. (3-29-10)~~

~~**b.** The credit applies to qualified investments placed in service during the project period. Qualified investments placed in service during the project period, but in a taxable year that does not qualify, will not qualify for the small employer investment tax credit, but may qualify for the investment tax credit allowed by Section 63-3029B, Idaho Code. For example, if a project begins after December 31, 2005, but in a fiscal year beginning in 2005, the qualified~~

~~investments placed in service during that taxable year will not qualify for the small employer investment tax credit, but may qualify for the investment tax credit allowed by Section 63-3029B, Idaho Code. (3-30-07)~~

~~**02. Taxpayers Entitled to the Credit.** The small employer investment tax credit is allowed only to taxpayers who certify that they will meet the small employer tax incentive criteria. (3-30-07)~~

~~**03. Qualified Investments.** (3-30-07)~~

~~**a.** Investments in new plant must meet the definition of qualified investments found in Section 63-3029B, Idaho Code, and requirements of Rules 710 through 719 of these rules, in addition to the requirements of Section 63-4403, Idaho Code, and related rules to qualify as qualified investments. (3-30-07)~~

~~**b.** Qualified investments must be placed in service in Idaho, but may be located in or outside the project site to qualify. (3-30-07)~~

~~**04. Limitations.** The small employer investment tax credit allowable in any taxable year is to be limited as follows: (3-30-07)~~

~~**a.** The small employer investment tax credit claimed during a taxable year may not exceed the lesser of: (3-30-07)~~

~~**i.** Seven hundred fifty thousand dollars (\$750,000); or (3-30-07)~~

~~**ii.** Sixty-two and five-tenths percent (62.5%) of the tax, after allowing all other income tax credits that may be claimed before the small employer investment tax credit, regardless of whether this credit results from a carryover earned in prior years, the current year, or both. See Rule 799 of these rules for the priority order for nonrefundable credits. (3-30-07)~~

~~**b.** Unitary Taxpayers. Limitations apply to each taxpayer according to its own tax liability. Each corporation in a unitary group is a separate taxpayer. See Rule 711 of these rules. (3-30-07)~~

~~**05. Carryovers.** The carryover period for the small employer investment tax credit is fourteen (14) years. (3-30-07)~~

~~**06. Coordination With Investment Tax Credit Allowed by Title 63, Chapter 30, Idaho Code.** A taxpayer who is eligible to claim the small employer investment tax credit is not eligible to claim the investment tax credit allowed by Section 63-3029B, Idaho Code, on the same property. However, if a taxpayer has qualified investments in a taxable year in which the project period begins or ends, the taxpayer may qualify for both the small employer investment tax credit on property placed in service during the project period in that taxable year and for the investment tax credit allowed by Section 63-3029B, Idaho Code, for property placed in service before or after the project period in that taxable year. (3-30-07)~~

#### **944. IDAHO SMALL EMPLOYER INCENTIVE ACT OF 2005 AS MODIFIED BY 2006 LEGISLATION: SMALL EMPLOYER REAL PROPERTY IMPROVEMENT TAX CREDIT (RULE 944).**

Sections 63-4404 and 63-4406, Idaho Code

**01. Credit Allowed.** (3-30-07)

~~**a.** The small employer real property improvement tax credit allowed by Section 63-4404, Idaho Code, may be earned during taxable years beginning on or after January 1, 2006 and before December 31, 2020. (3-29-10)~~

~~**b.** The credit applies to buildings and structural components of buildings placed in service during the project period. Qualified investments placed in service during the project period, but in a taxable year that does not qualify, will not qualify for the small employer real property improvement tax credit. For example, if a project begins~~

~~after December 31, 2005, but in a fiscal year beginning in 2005, the buildings and structural components placed in service during that taxable year will not qualify for the small employer real property improvement tax credit.~~ (3-30-07)

~~**02. Taxpayers Entitled to the Credit.** The small employer real property improvement tax credit is allowed only to taxpayers who certify that they will meet the small employer tax incentive criteria.~~ (3-30-07)

**03. Buildings and Structural Components of Buildings.** (3-30-07)

**a.** To qualify for the small employer real property improvement tax credit, buildings and structural components of buildings must meet the following requirements: (3-30-07)

**i.** The buildings and structural components of buildings must be new as defined in Subsection 940.03 of these rules. Structural components placed in service as part of a renovation of an existing building do not qualify. (3-30-07)

**ii.** The buildings and structural components of buildings must be placed in service at the project site. (3-30-07)

**b.** Buildings and structural components of buildings that meet the definition of qualified investments pursuant to Section 63-3029B, Idaho Code, will not qualify for the small employer real property improvement tax credit. (3-30-07)

~~**04. Limitations.** The small employer real property improvement tax credit allowable in any taxable year will be limited as follows:~~ (3-30-07)

~~**a.** The small employer real property improvement tax credit claimed during a taxable year may not exceed the lesser of:~~ (3-30-07)

~~**i.** One hundred twenty-five thousand dollars (\$125,000); or~~ (3-30-07)

~~**ii.** One hundred percent (100%) of the tax, after allowing all other income tax credits that may be claimed before the small employer real property improvement tax credit, regardless of whether this credit results from a carryover earned in prior years, the current year, or both. See Rule 799 of these rules for the priority order for nonrefundable credits.~~ (3-30-07)

~~**b.** Unitary Taxpayers. Limitations apply to each taxpayer according to its own tax liability. Each corporation in a unitary group is a separate taxpayer. See Rule 711 of these rules.~~ (3-30-07)

~~**05. Carryovers.** The carryover period for the small employer real property improvement tax credit is fourteen (14) years.~~ (3-30-07)

**945. IDAHO SMALL EMPLOYER INCENTIVE ACT OF 2005 AS MODIFIED BY 2006 LEGISLATION: SMALL EMPLOYER NEW JOBS TAX CREDIT (RULE 945).**

Sections 63-4405 and 63-4406, Idaho Code

~~**01. Credit Allowed.**~~ (3-30-07)

~~**a.** The small employer new jobs tax credit allowed by Section 63-4405, Idaho Code, may be earned during taxable years beginning on or after January 1, 2006 and before December 31, 2020.~~ (3-29-10)

~~**b.** The credit applies to new employees hired during the project period. New employees hired during the project period, but in a taxable year that does not qualify, will not qualify for the small employer new jobs tax credit. For example, if a project begins after December 31, 2005, but in a fiscal year beginning in 2005, new employees hired during that taxable year will not qualify for the small employer new jobs tax credit, but may qualify for the credit for qualifying new employees allowed by Section 63-3029F, Idaho Code.~~ (3-30-07)



~~e. The applicable credit rate per new employee depends on the wage rate received by a qualifying new employee. (3-30-07)~~

~~**02. Taxpayers Entitled to the Credit.** The small employer new jobs tax credit is allowed only to taxpayers who certify that they will meet the small employer tax incentive criteria. (3-30-07)~~

~~**03. Calculating Number of Employees.** (3-30-07)~~

~~a. Number of Employees Clarified. Only employees who meet the qualifications set forth in Sections 63-4402(2)(c) and 63-4405, Idaho Code, are included when computing the number of employees for a taxable year. Such requirements include the following: (3-30-07)~~

~~i. The employee must have worked primarily within the project site for the taxpayer. (3-30-07)~~

~~ii. The employee must have received earnings at a rate of more than twenty-four dollars and four cents (\$24.04) per hour worked. (3-30-07)~~

~~iii. The employee must have been eligible to receive employer provided coverage under a health plan described in Section 41-4703, Idaho Code. (3-30-07)~~

~~iv. The employee must have been subject to Idaho income tax withholding. (3-30-07)~~

~~v. The employee must have been covered for Idaho unemployment insurance purposes. (3-30-07)~~

~~vi. The employee must have been employed on a regular full-time basis. An employee who customarily performs duties at least forty (40) hours per week on average for the taxable year will be considered employed on a regular full-time basis. Leased employees do not qualify as employees of the lessee. (3-30-07)~~

~~vii. The employee must have been performing such duties for the taxpayer for a minimum of nine (9) months during the taxable year. An individual employed in a seasonal or new business that was in operation for less than nine (9) months during the taxable year does not qualify. (3-30-07)~~

~~b. Idaho Department of Labor Reports. The taxpayer should begin with his Idaho Department of Labor reports to determine the number of employees. However, all employees reported on these reports do not automatically qualify for the calculation of the number of employees. (3-30-07)~~

~~e. Calculation. To calculate the number of employees for a taxable year, add the total qualified employees for each month and divide that sum by the number of months of operation. (3-30-07)~~

~~**04. Calculating the Number of New Employees.** (3-30-07)~~

~~a. The number of new employees is the increase in the number of employees for the current taxable year over the greater of the following: (3-30-07)~~

~~i. The number of employees for the prior taxable year; or (3-30-07)~~

~~ii. The average of the number of employees for the three (3) prior taxable years. (3-30-07)~~

~~b. The requirements as to who qualifies for the calculation of number of employees in Paragraph 945.03.a., of this rule will apply in computing the number of employees in Subparagraphs 945.04.a.i., and 945.04.a.ii., of this rule. Calculations used in computing the number of new employees for the prior taxable year and average for the three (3) prior taxable years will be made consistent with the computations for the current taxable year. (3-30-07)~~

~~e. The number of new employees will be rounded down to the nearest whole number and must equal or exceed one (1) or no credit is earned. (3-30-07)~~

**05. ~~Computing the Credit Earned.~~** ~~The taxpayer will identify each new employee who qualifies for the credit and his annual salary for the taxable year. (3-30-07)~~

**a.** ~~If during the taxable year the new employee earned more than twenty-four dollars and four cents (\$24.04) per hour worked but less than or equal to an average rate of twenty-eight dollars and eighty-five cents (\$28.85) per hour worked, the credit for such new employee will be one thousand five hundred dollars (\$1,500). (3-30-07)~~

**b.** ~~If during the taxable year the new employee earned more than an average rate of twenty-eight dollars and eighty-five cents (\$28.85) per hour worked but less than or equal to an average rate of thirty-six dollars and six cents (\$36.06) per hour worked, the credit for such new employee will be two thousand dollars (\$2,000). (3-30-07)~~

**c.** ~~If during the taxable year the new employee earned more than an average rate of thirty-six dollars and six cents (\$36.06) per hour worked but less than or equal to an average rate of forty-three dollars and twenty-seven cents (\$43.27) per hour worked, the credit for such new employee will be two thousand five hundred dollars (\$2,500). (3-30-07)~~

**d.** ~~If during the taxable year the new employee earned more than an average rate of forty-three dollars and twenty-seven cents (\$43.27) per hour worked, the credit for such new employee will be three thousand dollars (\$3,000). (3-30-07)~~

**06. ~~Limitations.~~** ~~The small employer new jobs tax credit allowable in any taxable year will be limited as follows: (3-30-07)~~

**a.** ~~The small employer new jobs tax credit claimed during a taxable year may not exceed sixty-two and five-tenths percent (62.5%) of the tax, after allowing all other income tax credits that may be claimed before the small employer new jobs tax credit, regardless of whether this credit results from a carryover earned in prior years, the current year, or both. See Rule 799 of these rules for the priority order for nonrefundable credits. (3-30-07)~~

**b.** ~~Unitary Taxpayers. Limitations apply to each taxpayer according to its own tax liability. Each corporation in a unitary group is a separate taxpayer. See Rule 711 of these rules. (3-30-07)~~

**07. ~~Carryovers.~~** ~~The carryover period for the small employer new jobs tax credit is ten (10) years. (3-30-07)~~

**08. ~~Coordination With Credit for Qualifying New Employees Allowed by Title 63, Chapter 30, Idaho Code.~~** ~~A taxpayer who has new employees who are eligible for the small employer new jobs tax credit may not claim the credit for qualifying new employees allowed by Section 63-3029F, Idaho Code, with respect to the same employees. However, a taxpayer may claim the credit for qualifying new employees for any new employees who do not meet the requirements for the small employer new jobs tax credit, but who meet the requirements of Sections 63-3029E and 63-3029F, Idaho Code. (3-30-07)~~

**946. IDAHO SMALL EMPLOYER INCENTIVE ACT OF 2005 AS MODIFIED BY 2006 LEGISLATION: RECAPTURE (RULE 946).**  
Section 63-4407, Idaho Code

**01. ~~Failure to Meet Tax Incentive Criteria.~~** ~~If a taxpayer fails to meet the small employer tax incentive criteria, the full amount of the small employer investment tax credit, real property improvement tax credit and new jobs tax credit claimed in any taxable year will be recaptured. (3-30-07)~~

**02. ~~Year Deficiency Occurs.~~** ~~Recapture will be a deficiency in tax in the taxable year when the disqualification first occurs. For investment in new plant, disqualification occurs when the property is disposed of or otherwise ceases to qualify. For new employees, disqualification occurs when the average number of qualifying employees for a taxable year in the recapture period falls below the average number of qualifying employees for the year in which the credit was earned in Section 63-4405, Idaho Code. (4-2-08)~~

**03. ~~Early Disposition of Investment in New Plant.~~** (3-30-07)

~~a. If an investment in new plant is disposed of, or otherwise ceases to qualify, prior to the close of the recapture period, the recapture amount will be computed by multiplying the credit earned by the applicable recapture percentage.~~ (3-30-07)

~~b. The recapture percentage will be determined as follows. If the property is disposed of or ceases to qualify within:~~ (3-30-07)

~~i. One (1) full year or less from the date the property was placed in service, one hundred percent (100%) will be used;~~ (3-30-07)

~~ii. Two (2) full years or less, but more than one (1) full year from the date the property was placed in service, eighty percent (80%) will be used;~~ (3-30-07)

~~iii. Three (3) full years or less, but more than two (2) full years from the date the property was placed in service, sixty percent (60%) will be used;~~ (3-30-07)

~~iv. Four (4) full years or less, but more than three (3) full years from the date the property was placed in service, forty percent (40%) will be used;~~ (3-30-07)

~~v. Five (5) full years or less, but more than four (4) full years from the date the property was placed in service, twenty percent (20%) will be used.~~ (3-30-07)

**04. ~~Failure to Maintain Increased Employment.~~** (3-30-07)

~~a. If the average number of qualifying employees for the taxable year in which the credit was earned in Section 63-4405, Idaho Code, is not maintained for the entire recapture period, the recapture amount will be computed by multiplying the credit earned by the applicable recapture percentage.~~ (4-2-08)

~~b. The recapture percentage will be determined as follows. If the level of employment is maintained:~~ (4-2-08)

~~i. One (1) full year or less from the date the project period ends, one hundred percent (100%) will be used;~~ (3-30-07)

~~ii. Two (2) full years or less, but more than one (1) full year from the date the project period ends, eighty percent (80%) will be used;~~ (3-30-07)

~~iii. Three (3) full years or less, but more than two (2) full years from the date the project period ends, sixty percent (60%) will be used;~~ (3-30-07)

~~iv. Four (4) full years or less, but more than three (3) full years from the date the project period ends, forty percent (40%) will be used;~~ (3-30-07)

~~v. Five (5) full years or less, but more than four (4) full years from the date the project period ends, twenty percent (20%) will be used.~~ (3-30-07)

~~e. Recapture will not be required if a new employee is replaced by another employee who performs the same duties as the previous employee at a wage rate that would have resulted in the same amount of credit being earned.~~ (3-30-07)

**05. ~~Reorganizations, Mergers and Liquidations.~~** (3-30-07)

~~a. If the investment in new plant is disposed of or otherwise ceases to qualify before the close of the recapture period while in the hands of an acquiring taxpayer who succeeded to unused small employer investment tax~~

~~credit or small employer real property improvement tax credit as provided for in Rule 941.03 of these rules, the acquiring taxpayer will be responsible for any recapture that would have been applicable to the transferor. (3-30-07)~~

~~**b.** For purposes of computing the recapture when an acquiring taxpayer succeeded to unused small employer investment tax credit and small employer real property improvement tax credit as provided for in Rule 941.03 of these rules, the recapture period will begin with the date on which the property was placed in service by the transferor taxpayer and will end with the date of the disposition by, or cessation with respect to, the acquiring taxpayer. (3-30-07)~~

**947. -- 999. (RESERVED)**