

## 35.01.01 – INCOME TAX ADMINISTRATIVE RULES

### 000. LEGAL AUTHORITY.

In accordance with Sections 63-105 and 63-3039, Idaho Code, the State Tax Commission (Tax Commission) has promulgated rules implementing the provisions of the Idaho Income Tax Act. (4-6-23)

### *(BREAK IN CONTINUITY OF SECTIONS)*

### 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. (4-6-23)

**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: (4-6-23)

**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. (4-6-23)

**b.** Certain business expenses of reservists, performing artists, and fee-basis government officials. (4-6-23)

**c.** Jury duty pay remitted to an employer. (4-6-23)

**d.** Deductible expenses related to income from the rental of personal property engaged in for profit. (4-6-23)

**e.** 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. (4-6-23)

**f.** 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. (4-6-23)

**g.** 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. (4-6-23)

**h.** Qualified tips

i. Qualified overtime

**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. (4-6-23)

**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. (4-6-23)

**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. (4-6-23)

**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: (4-6-23)

**a.** Alimony payments. (4-6-23)

**b.** Moving expenses. (4-6-23)

**c.** Student loan interest payments. (4-6-23)

**d.** Tuition and fees deduction. (4-6-23)

e. Enhanced deduction for seniors

f. Qualified passenger loan interest deduction

**(BREAK IN CONTINUITY OF SECTIONS)**

**771. ~~GROCERY~~FOOD TAX CREDIT: TAXABLE YEARS BEGINNING AFTER DECEMBER 31, 2007 (RULE 771).**

Section 63-3024A, Idaho Code

~~**01. Residents.** (4-6-23)~~

~~**a.** The additional twenty dollar (\$20) credit may not be claimed for other dependents who are age sixty five (65) or older. (4-6-23)~~

**021. Part-Year Residents.** A part-year resident is entitled to a prorated credit based on the number of months ~~he was~~they were 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~~their tax liability, the part-year resident is not entitled to a refund. (4-6-23)

**032. 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: (4-6-23)

**a.** Received assistance under the federal food stamp program; or (4-6-23)

b. Was incarcerated. (4-6-23)

**043. Nonresidents.** A nonresident is not entitled to the credit even though the individual may have been employed in Idaho for the entire year. (~~4-6-23~~)

**054. Members of the Uniformed Services.** A member of the uniformed services who is: (~~4-6-23~~)

a. Domiciled in Idaho is entitled to this credit; (4-6-23)

b. Residing in Idaho but who is a nonresident pursuant to the Servicemembers Civil Relief Act is not entitled to this credit. (4-6-23)

**065. 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~~ food tax 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. (~~4-6-23~~)

*(BREAK IN CONTINUITY OF SECTIONS)*

**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. (4-6-23)

**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: (4-6-23)

a. Credit for taxes paid to other states as authorized by Section 63-3029, Idaho Code; (4-6-23)

b. For part-year residents only, the ~~grocery~~ food tax credit as authorized by Section 63-3024A, Idaho Code; (~~4-6-23~~)

c. Credit for contributions to Idaho educational institutions as authorized by Section 63-3029A, Idaho Code; (4-6-23)

d. Investment tax credit as authorized by Section 63-3029B, Idaho Code; (4-6-23)

e. Credit for contributions to Idaho youth facilities, rehabilitation facilities, and nonprofit substance abuse centers as authorized by Section 63-3029C, Idaho Code; (4-6-23)

f. Credit for equipment using postconsumer waste or postindustrial waste as authorized by Section 63-3029D, Idaho Code; (4-6-23)

g. Promoter-sponsored event credit as authorized by Section 63-3620C, Idaho Code; (4-6-23)

h. Credit for Idaho research activities as authorized by Section 63-3029G, Idaho Code; (4-6-23)

i. Broadband equipment investment credit as authorized by Section 63-3029I, Idaho Code; and (4-6-23)

j. Small employer investment tax credit as authorized by Section 63-4403, Idaho Code. (4-6-23)

k. Small employer real property improvement tax credit as authorized by Section 63-4404, Idaho Code. (4-6-23)

l. Small employer new jobs tax credit as authorized by Section 63-4405, Idaho Code. (4-6-23)

m. Credit for live organ donation expenses as authorized by Section 63-3029K, Idaho Code. (4-6-23)

~~n. Idaho child tax credit as authorized by Section 63-3029L, Idaho Code. (4-6-23)~~

~~on.~~ Credit for employer contributions to employee's Idaho college savings program account as authorized by Section 63-3029M, Idaho Code. (4-6-23)

**03. Adjustments to Credits.** (4-6-23)

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. (4-6-23)

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. (4-6-23)

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. (4-6-23)

***(BREAK IN CONTINUITY OF SECTIONS)***

**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. (4-6-23)~~

**021. 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. (4-6-23)

**032. 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. (4-6-23)

**043. 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. (4-6-23)

**054. 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. (4-6-23)

**896. REQUEST FOR PROMPT ACTION BY THE TAX COMMISSION (RULE 896).**

Section 63-3068(e), Idaho Code

**01. 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: (4-6-23)

- a.** It must be filed after the applicable return has been filed; (4-6-23)
- b.** It must be filed separately from any other document; (4-6-23)
- c.** It must identify the taxpayer by name and identification number and the taxable periods for which the prompt action is requested; and (4-6-23)
- d.** It must clearly state that it is a request for prompt action pursuant to Section 63-3068(e), Idaho Code. (4-6-23)

**02. 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~~their estate during the period of administration. ~~(4-6-23)~~

***(BREAK IN CONTINUITY OF SECTIONS)***

**945. -- 999. (RESERVED)**