

Dear Senators SIDDOWAY, Guthrie, Stennett, and
Representatives COLLINS, Trujillo, Erpelding:

The Legislative Services Office, Research and Legislation, has received the enclosed rules of the
State Tax Commission Proposed Income Tax Rules:

IDAPA 35.01.01 - Income Tax - Proposed Rule (Docket No. 35-0101-1501);

IDAPA 35.01.01 - Income Tax - Proposed Rule (Docket No. 35-0101-1502).

Pursuant to Section 67-454, Idaho Code, a meeting on the enclosed rules may be called by the
cochairmen or by two (2) or more members of the subcommittee giving oral or written notice to Research
and Legislation no later than fourteen (14) days after receipt of the rules' analysis from Legislative
Services. The final date to call a meeting on the enclosed rules is no later than 09/23/2015. If a meeting is
called, the subcommittee must hold the meeting within forty-two (42) days of receipt of the rules' analysis
from Legislative Services. The final date to hold a meeting on the enclosed rules is 10/21/2015.

The germane joint subcommittee may request a statement of economic impact with respect to a
proposed rule by notifying Research and Legislation. There is no time limit on requesting this statement,
and it may be requested whether or not a meeting on the proposed rule is called or after a meeting has
been held.

To notify Research and Legislation, call 334-4834, or send a written request to the address on the
memorandum attached below.



Eric Milstead
Director

Legislative Services Office

Idaho State Legislature

Serving Idaho's Citizen Legislature

MEMORANDUM

TO: Rules Review Subcommittee of the Senate Local Government & Taxation Committee and the House Revenue & Taxation Committee

FROM: Division Manager - Mike Nugent

DATE: September 03, 2015

SUBJECT: State Tax Commission Proposed Income Tax Rules

IDAPA 35.01.01 - Income Tax - Proposed Rule (Docket No. 35-0101-1501)

IDAPA 35.01.01 - Income Tax - Proposed Rule (Docket No. 35-0101-1502)

The Idaho State Tax Commission is proposing to promulgate two dockets of proposed rules relating to the State Income Tax. The first set of proposed rules in Docket No. 35-0101-1501 provides to add a new Rule 016 to provide guidance regarding the definition of Idaho gross income and how it is calculated. Rule 171 is proposed to be amended to modify the definition of real property, to modify the list of nonqualifying property for the Idaho capital gains deduction and to modify the procedure when property is distributed by an S corporation or partnership. Rule 291 is being amended to provide guidance regarding items allowed as a deduction to owners of an interest in a pass-through entity when the tax is paid by the entity.

The second set of proposed rules in Docket No. 35-0101-1502 proposes to do the following: Rule 075 is proposed to be amended to add the tax brackets for calendar year 2015 and to remove the information for calendar year 2010, so only five years of historical data are retained in the rule. Rule 130 is proposed to be amended consistent with HB36 of 2015 to add the Foreign Service Retirement and Disability System and its offset program to the list of qualified benefits for the Retirement Benefits Deduction. It also adds the offset program of the Civil Service Retirement System to the list of qualified benefits. Rule 173 is proposed to be amended consistent with HB133 of 2015 to change who must meet the gross income limitations for the Idaho capital gains deduction when the gain is passed through from an S corporation, partnership, trust, or estate. Rule 201 is proposed to be amended to clarify the procedure for adjustments to a net operating loss. Rule 252 is proposed to be amended to remedy the distorted percentage that occurs when the ratio of Idaho total income is used to allow certain deductions to part-year residents or nonresidents. The distorted percentage occurs when a part-year resident or nonresident has a federal net operating loss carryover that wipes out income for federal purposes. Rule 263 is proposed to be amended to update the amount of guaranteed payment that is sourced as compensation for services per Section 63-3026A(3)(a)(i)(2), Idaho Code. Rule 771 is proposed to be amended to add tax year 2015 and the applicable grocery credit amounts to the table. Finally, Rule 855 is proposed to be amended to delete the reference to the election under Section 63-3022L, Idaho Code. The election language was removed from Section 63-3022L, Idaho Code, in 2012.

It appears that the proposed rules contained in both dockets have been promulgated within the scope of statutory authority granted to the Idaho State Tax Commission.

Mike Nugent, Manager
Research & Legislation

Cathy Holland-Smith, Manager
Budget & Policy Analysis

April Renfro, Manager
Legislative Audits

Glenn Harris, Manager
Information Technology

cc: State Tax Commission
Sherry Briscoe

IDAPA 35 - IDAHO STATE TAX COMMISSION

35.01.01 - INCOME TAX ADMINISTRATIVE RULES

DOCKET NO. 35-0101-1501

NOTICE OF RULEMAKING - PROPOSED RULE

AUTHORITY: In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Sections 63-105 and 63-3039, Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than September 16, 2015.

The hearing site(s) will be accessible to persons with disabilities. Requests for accommodation must be made not later than five (5) days prior to the hearing, to the agency address below.

DESCRIPTIVE SUMMARY: The following is a nontechnical explanation of the substance and purpose of the proposed rulemaking:

Rule 016 is being promulgated to provide guidance regarding the definition of Idaho gross income and how it is calculated.

Rule 171 is being amended to modify the definition of real property, modify the list of nonqualifying property for the Idaho capital gains deduction and modify the procedure when property is distributed by an S corporation or partnership.

Rule 291 is being amended to provide guidance regarding items allowed as a deduction to owners of an interest in a pass-through entity when the tax is paid by the entity.

FEE SUMMARY: The following is a specific description of the fee or charge imposed or increased: None.

FISCAL IMPACT: The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year resulting from this rulemaking: NA

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(1), Idaho Code, negotiated rulemaking was conducted. The Notice of Intent to Promulgate Rules – Negotiated Rulemaking was published in the July 1, 2015 Idaho Administrative Bulletin, [Vol. 15-7, pages 72-73](#).

INCORPORATION BY REFERENCE: Pursuant to Section 67-5229(2)(a), Idaho Code, the following is a brief synopsis of why the materials cited are being incorporated by reference into this rule: NA

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Cynthia Adrian at (208) 334-7670.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before Wednesday, September 23, 2015.

DATED this 30th Day of July, 2015.

Cynthia Adrian
Tax Policy Specialist
Idaho State Tax Commission
P.O. Box 36
Boise, ID 83722-0410
(208) 334-7670

THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 35-0101-1501
(Only Those Sections With Amendments Are Shown.)

016. IDAHO GROSS INCOME.
Sections 63-3011 and 63-3030, Idaho Code

01. In General. Gross income means all income from whatever source derived, unless specifically excluded by the Internal Revenue Code. ()

02. Gross Income from Pass-Through Entities. Gross income includes an owner's share of a pass-through entity's gross income pursuant to sections 702(c) and 1366(c) of the Internal Revenue Code, and federal Treasury Regulation Section 1.61-13 (citing Part I, Subchapter J, Chapter 1 of the Internal Revenue Code). ()

03. Gross Income from Idaho Sources. Gross income from Idaho sources is that portion of total gross income derived from or related to sources within Idaho. Income derived from or related to sources within Idaho is determined pursuant to this rule and Rules 260 through 286 of these rules. ()

04. Idaho Source Gross Income from a Pass-Through Entity. ()

a. Partnership. The amount of a partner's gross income from Idaho sources is: ()

i. The partner's distributive share of partnership gross income included in the partnership's apportionable income multiplied by the Idaho apportionment factor of the partnership; and ()

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

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

i. The shareholder's pro rata share of the S corporation gross income included in the S corporation's apportionable income multiplied by the Idaho apportionment factor of the S corporation; and ()

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

c. Trust or Estate. The Idaho source portion of the income that constitutes gross income pursuant to federal Treasury Regulation Section 1.61-13 and Part I, Subchapter J, Chapter 1 of the Internal Revenue Code, is the amount of such income that would be Idaho source if received directly by the individual. ()

05. Examples. ()

a. A taxpayer's federal adjusted gross income includes ten thousand dollars (\$10,000) of ordinary loss passed through from a partnership that transacts business only in Idaho. However, the taxpayer's distributive share of the partnership's gross income determined under Section 61 of the Internal Revenue Code is fifty thousand dollars (\$50,000). The taxpayer's gross income from Idaho sources from the partnership is fifty thousand dollars (\$50,000). ()

b. A taxpayer's federal adjusted gross income includes ten thousand dollars (\$10,000) of ordinary loss passed through from a partnership that has a fifty percent (50%) Idaho apportionment factor. However, the taxpayer's distributive share of the partnership's gross income determined under Section 61 of the Internal Revenue Code is fifty thousand dollars (\$50,000). The taxpayer's gross income from Idaho sources from the partnership is twenty-five thousand dollars (\$25,000). ()

c. A nonresident taxpayer's federal adjusted gross income includes five thousand dollars (\$5,000) of guaranteed payments for services performed outside of Idaho received from a partnership that has a fifty percent

(50%) Idaho apportionment factor. As provided in Section 63-3026A(3)(a)(i)(2), Idaho Code, none of the guaranteed payments are included in the partner's gross income from Idaho sources because the services were performed outside of Idaho. ()

d. A nonresident taxpayer's federal adjusted gross income includes five thousand dollars (\$5,000) of guaranteed payments for services performed in Idaho received from a partnership that has a fifty percent (50%) Idaho apportionment factor. As provided in Section 63-3026A(3)(a)(i)(2), Idaho Code, all of the guaranteed payments are included in the partner's gross income from Idaho sources because the services were performed in Idaho. ()

e. A nonresident taxpayer's federal adjusted gross income includes three hundred thousand dollars (\$300,000) of guaranteed payments for services performed outside of Idaho received from a partnership that has a fifty percent (50%) Idaho apportionment factor. As provided in Section 63-3026A(3)(a)(i)(2), Idaho Code, the first two hundred and fifty thousand dollars (\$250,000) of guaranteed payments are sourced as compensation for services. Since the services were performed outside of Idaho, two hundred and fifty thousand dollars (\$250,000) of the guaranteed payments are not included in the partner's gross income from Idaho sources. However, twenty-five thousand dollars (\$25,000) of the guaranteed payments in excess of two hundred and fifty thousand dollars (\$250,000) are included in the partner's gross income from Idaho sources based on the apportionment factor of the partnership. ()

f. A nonresident taxpayer's federal adjusted gross income includes ten thousand dollars (\$10,000) of nonbusiness gross income passed through from a partnership that has a fifty percent (50%) Idaho apportionment factor. If the partnership's nonbusiness income is allocated to Idaho, ten thousand dollars (\$10,000) of the nonbusiness gross income is included in the partner's gross income from Idaho sources. If the partnership's nonbusiness income is allocated to a state other than Idaho, none of the nonbusiness gross income is included in the partner's gross income from Idaho sources. ()

0167. -- 024. (RESERVED)

(BREAK IN CONTINUITY OF SECTIONS)

171. IDAHO CAPITAL GAINS DEDUCTION -- QUALIFIED PROPERTY (RULE 171).

Section 63-3022H, Idaho Code.

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

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

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

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

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

b. Cut timber if the taxpayer elects to treat the cutting of timber as a sale or exchange pursuant to

- Section 631(a), Internal Revenue Code. (3-20-97)
- 05. Nonqualifying Property.** Nonqualifying property includes: (4-4-13)
- a.** Real or tangible personal property not having an Idaho situs. (4-4-13)
- b.** Tangible personal property not used by a revenue-producing enterprise. (4-4-13)
- c.** Intangible property. Some examples of intangible property include, but are not limited to: (4-4-13)
- i. Stocks and bonds; (4-4-13)
- ~~ii. Easements and rights of way, including agricultural, forest, historic, or open space easements;~~ (~~4-4-13~~)
- ~~iii. Grazing permits;~~ (~~4-4-13~~)
- ~~iv. Leasehold interests, regardless of term;~~ (~~4-4-13~~)
- ~~v. Options;~~ (~~4-4-13~~)
- ~~vi. Water, mineral, hunting and fishing, renewable energy, and land surface rights;~~ (~~4-4-13~~)
- ~~vii. Conservation easements;~~ (~~4-4-13~~)
- ~~viii. Scenic easements;~~ (~~4-4-13~~)
- ~~ix.~~ Interests in a partnership, LLC, or S corporation. (4-4-13)
- 06. Holding Periods.** (3-20-97)
- a.** In General. To qualify for the capital gains deduction, property otherwise eligible for the Idaho capital gains deduction must be held for specific time periods. The holding periods for Idaho purposes generally follow Sections 1223 and 735, Internal Revenue Code. (5-8-09)
- b.** Exception to the Tacked-On Holding Period. The holding period of property given up in a tax-free exchange is not tacked on to the holding period of the property received if the property given up was nonqualifying property based on the requirements of Section 63-3022H(3), Idaho Code. (4-4-13)
- c.** Installment Sales. The determination of whether the property meets the required holding period is made using the laws applicable for the year of the sale. If the required holding period is not met in the year of sale, the gain is not from qualified property. The classification as nonqualified property will not change even though the gain may be reported in subsequent years when a reduced holding period is applicable. (4-5-00)
- d.** Examples of nonqualifying property. (7-1-98)
- i. A taxpayer purchased land in California. After owning the land three (3) years, he gave up the California land in a tax-free exchange for land in Idaho. He owned the Idaho land for ten (10) months until selling it at a gain. For federal purposes the holding period of the California land tacks on to the holding period of the Idaho land. The gain from the sale of the California land would not qualify for the Idaho capital gains deduction since it is real property located outside Idaho. The holding period of the California land does not tack on to the holding period of the Idaho land for purposes of the Idaho capital gains deduction. Because the Idaho land was not held for twelve (12) months, the gain from the sale of the Idaho land does not qualify for the Idaho capital gains deduction. (3-30-07)
- ii. Assume the same facts as in the example in Subparagraph 171.05.d.i. except the taxpayer's original purchase was land in Idaho. Because the taxpayer owned real property in Idaho that was exchanged for a second

parcel of real property in Idaho, the holding period of the Idaho land given up tacks on to the holding period of the second parcel of Idaho land. Because the holding period of the second property, which includes the holding period of the first property, was at least twelve (12) months, the gain from the sale of the second parcel of real property qualifies for the Idaho capital gains deduction. (4-7-11)

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

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

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

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

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

(BREAK IN CONTINUITY OF SECTIONS)

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

i. Section 179 deduction; ()

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

iii. Investment interest expense; ()

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

v. Amounts paid for medical insurance; ()

vi. Educational assistance benefits; ()

vii. Payments to a pension or IRA. ()

04. Double Deductions Disallowed. A pass-through owner may not deduct amounts that previously have been deducted by a pass-through entity paying the tax on his behalf. If the pass-through owner files an Idaho individual income tax return reporting federal taxable income that includes amounts previously deducted by a pass-through entity on his behalf, the pass-through owner must add back the duplicated deduction amounts in computing his Idaho taxable income on his individual income tax return. (4-7-11)

IDAPA 35 - IDAHO STATE TAX COMMISSION

35.01.01 - INCOME TAX ADMINISTRATIVE RULES

DOCKET NO. 35-0101-1502

NOTICE OF RULEMAKING - PROPOSED RULE

AUTHORITY: In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Sections 63-105 and 63-3039, Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than September 16, 2015.

The hearing site(s) will be accessible to persons with disabilities. Requests for accommodation must be made not later than five (5) days prior to the hearing, to the agency address below.

DESCRIPTIVE SUMMARY: The following is a nontechnical explanation of the substance and purpose of the proposed rulemaking:

Rule 075 is being amended to add the tax brackets for calendar year 2015 and remove the information for calendar year 2010 so only five years of historical data is retained in the rule.

Rule 130 is being amended consistent with 2015 HB36 to add the Foreign Service Retirement and Disability System and its offset program to the list of qualified benefits for the Retirement Benefits Deduction. It also adds the offset program of the Civil Service Retirement System to the list of qualified benefits.

Rule 173 is being amended consistent with 2015 HB133 to change who must meet the gross income limitations for the Idaho capital gains deduction when the gain is passed through from an S corporation, partnership, trust, or estate.

Rule 201 is being amended to clarify the procedure for adjustments to a net operating loss.

Rule 252 is being amended to remedy the distortive percentage that occurs when the ratio of Idaho total income is used to allow certain deductions to part-year or nonresidents. The distortive percentage occurs when a part-year or nonresident has a federal NOL carryover that wipes out income for federal purposes.

Rule 263 is being amended to update the amount of guaranteed payments that is sourced as compensation for services per Section 63-3026A(3)(a)(i)(2), Idaho Code.

Rule 771 is being amended to add tax year 2015 and the applicable grocery credit amounts to the table.

Rule 855 is being amended to delete the reference to the election under Section 63-3022L, Idaho Code. The election language was removed from Section 63-3022L, Idaho Code, in 2012.

FEE SUMMARY: The following is a specific description of the fee or charge imposed or increased: None.

FISCAL IMPACT: The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year resulting from this rulemaking: NA

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted because the changes were of a simple nature or complied with statutory changes.

INCORPORATION BY REFERENCE: Pursuant to Section 67-5229(2)(a), Idaho Code, the following is a brief synopsis of why the materials cited are being incorporated by reference into this rule: NA

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Cynthia Adrian at (208) 334-7670.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before Wednesday, September 23, 2015.

DATED this 30th Day of July, 2015.

Cynthia Adrian
 Tax Policy Specialist
 Idaho State Tax Commission
 P.O. Box 36
 Boise, ID 83722-0410
 (208) 334-7670

THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 35-0101-1502
(Only Those Sections With Amendments Are Shown.)

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 2010:*

IF IDAHO TAXABLE INCOME IS		IDAHO TAX		
<i>At least</i>	<i>But less than</i>	<i>Is</i>		<i>Plus</i>
\$1	\$1,316	\$0	+	1.6% of taxable income
\$1,316	\$2,632	\$21.06	+	3.6% of the amount over \$1,316
\$2,632	\$3,948	\$68.44	+	4.1% of the amount over \$2,632
\$3,948	\$5,264	\$122.40	+	5.1% of the amount over \$3,948

IF IDAHO TAXABLE INCOME IS		IDAHO TAX	
At least	But less than	Is	Plus
\$5,264	\$6,580	\$189.52	+ 6.1% of the amount over \$5,264
\$6,580	\$9,870	\$269.80	+ 7.1% of the amount over \$6,580
\$9,870	\$26,320	\$503.39	+ 7.4% of the amount over \$9,870
\$26,320 or more		\$1,720.69	+ 7.8% of the amount over \$26,320
Tax and bracket amounts were calculated using consumer price index amounts published on May 4, 2010.			

(4-7-11)

ba. For taxable years beginning in 2011:

IF IDAHO TAXABLE INCOME IS		IDAHO TAX	
At least	But less than	Is	Plus
\$1	\$1,338	\$0	+ 1.6% of taxable income
\$1,338	\$2,676	\$21.41	+ 3.6% of the amount over \$1,338
\$2,676	\$4,014	\$69.58	+ 4.1% of the amount over \$2,676
\$4,014	\$5,352	\$124.44	+ 5.1% of the amount over \$4,014
\$5,352	\$6,690	\$192.68	+ 6.1% of the amount over \$5,352
\$6,690	\$10,035	\$274.30	+ 7.1% of the amount over \$6,690
\$10,035	\$26,760	\$511.80	+ 7.4% of the amount over \$10,035
\$26,760 or more		\$1,749.45	+ 7.8% of the amount over \$26,760
Tax and bracket amounts were calculated using consumer price index amounts published on May 24, 2011.			

(2-27-12)

eb. For taxable years beginning in 2012:

IF IDAHO TAXABLE INCOME IS		IDAHO TAX	
At least	But less than	Is	Plus
\$1	\$1,380	\$0	+ 1.6% of taxable income
\$1,380	\$2,760	\$22.08	+ 3.6% of the amount over \$1,380
\$2,760	\$4,140	\$71.76	+ 4.1% of the amount over \$2,760
\$4,140	\$5,520	\$128.34	+ 5.1% of the amount over \$4,140
\$5,520	\$6,900	\$198.72	+ 6.1% of the amount over \$5,520
\$6,900	\$10,350	\$282.90	+ 7.1% of the amount over \$6,900
\$10,350 or more		\$527.85	+ 7.4% of the amount over \$10,350
Tax and bracket amounts were calculated using consumer price index amounts published on April 13, 2012.			

(4-4-13)

dc. For taxable years beginning in 2013:

IF IDAHO TAXABLE INCOME IS		IDAHO TAX		
At least	But less than	Is		Plus
\$1	\$1,409	\$0	+	1.6% of taxable income
\$1,409	\$2,818	\$22.54	+	3.6% of the amount over \$1,409
\$2,818	\$4,227	\$73.26	+	4.1% of the amount over \$2,818
\$4,227	\$5,636	\$131.03	+	5.1% of the amount over \$4,227
\$5,636	\$7,045	\$202.89	+	6.1% of the amount over \$5,636
\$7,045	\$10,568	\$288.84	+	7.1% of the amount over \$7,045
\$10,568 or more		\$538.94	+	7.4% of the amount over \$10,568

Tax and bracket amounts were calculated using consumer price index amounts published on April 13, 2013.

(3-20-14)

ed. For taxable years beginning in 2014:

IF IDAHO TAXABLE INCOME IS		IDAHO TAX		
At least	But less than	Is		Plus
\$1	\$1,429	\$0	+	1.6% of taxable income
\$1,429	\$2,858	\$22.86	+	3.6% of the amount over \$1,429
\$2,858	\$4,287	\$74.30	+	4.1% of the amount over \$2,858
\$4,287	\$5,716	\$132.89	+	5.1% of the amount over \$4,287
\$5,716	\$7,145	\$205.77	+	6.1% of the amount over \$5,716
\$7,145	\$10,718	\$292.94	+	7.1% of the amount over \$7,145
\$10,718 or more		\$546.59	+	7.4% of the amount over \$10,718

Tax and bracket amounts were calculated using consumer price index amounts published on April 13, 2014.

(4-11-15)

e. For taxable years beginning in 2015:

IF IDAHO TAXABLE INCOME IS		IDAHO TAX		
<u>At least</u>	<u>But less than</u>	<u>Is</u>		<u>Plus</u>
<u>\$1</u>	<u>\$1.452</u>	<u>\$0</u>	<u>±</u>	<u>1.6% of taxable income</u>
<u>\$1.452</u>	<u>\$2.904</u>	<u>\$23.23</u>	<u>±</u>	<u>3.6% of the amount over \$1,452</u>
<u>\$2.904</u>	<u>\$4.356</u>	<u>\$75.50</u>	<u>±</u>	<u>4.1% of the amount over \$2,904</u>

IF IDAHO TAXABLE INCOME IS		IDAHO TAX		
At least	But less than	Is		Plus
\$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, 2014.				

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(BREAK IN CONTINUITY OF SECTIONS)

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 ~~by the United States Government~~, 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. (4-4-13)()

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 ~~by~~ out of the public employee's retirement system do not qualify for the deduction. (3-20-97)()

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)

c. 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)

(BREAK IN CONTINUITY OF SECTIONS)

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. **Gross Income Limitations.** To qualify for the Idaho capital gains deduction on the pass through gain from qualified property of an S corporation, partnership, trust, or estate, a shareholder, partner, or beneficiary must meet the gross income limitations specified in Section 63-3022H(3), Idaho Code, for that type of property. For example, if the property was breeding livestock, the shareholder, partner, or beneficiary must have more than one half (1/2) of his gross income for the taxable year of the sale from farming or ranching operations in Idaho. (3-30-07)~~

~~03. **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, shall 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)~~

~~04. **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 173.04.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 173.04.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 173.04.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 173.04.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 173.04.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)

(BREAK IN CONTINUITY OF SECTIONS)

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. ~~(3-20-97)~~()

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. ~~(3-20-97)~~()

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)

c. 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)

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)

c. 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 ~~computed without the federal net operating loss deduction~~. ~~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:
(3-20-14)()

- 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)

(BREAK IN CONTINUITY OF SECTIONS)

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 264.04.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 2013 amount is two hundred fifty thousand dollars (\$250,000) and will be adjusted annually. The 2014 amount is two hundred fifty thousand dollars (\$250,000).~~ The amount of guaranteed payments that are sourced as compensation for services is as follows:

<u>TAX YEAR</u>	<u>AMOUNT</u>
<u>2015</u>	<u>\$254,000</u>
<u>2014</u>	<u>\$250,000</u>
<u>2013</u>	<u>\$250,000</u>

~~(4-11-15)()~~

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)

(BREAK IN CONTINUITY OF SECTIONS)

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
2015	\$100	\$100
2014	\$100	\$90
2013	\$100	\$80
2012	\$90	\$70
2011	\$80	\$60
2010	\$70	\$50
2009	\$60	\$40
2008	\$50	\$30

~~(4-11-15)~~

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)

c. 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)

(BREAK IN CONTINUITY OF SECTIONS)

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. ~~For information on when an entity is required to pay the permanent building fund tax for an individual who makes the election under Section 63-3022L, Idaho Code, see Subsection 855.06 of this rule.~~ (3-20-14)()

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)