

IN THE HOUSE OF REPRESENTATIVES

HOUSE BILL NO. 514

BY REVENUE AND TAXATION COMMITTEE

AN ACT

1 RELATING TO TAXATION; AMENDING SECTION 63-3022H, IDAHO CODE, TO REVISE  
2 PROVISIONS REGARDING CERTAIN QUALIFIED PROPERTY HELD BY AN ESTATE,  
3 TRUST, S CORPORATION, PARTNERSHIP, LIMITED LIABILITY COMPANY OR AN IN-  
4 DIVIDUAL, TO ESTABLISH PROVISIONS REGARDING FAIR MARKET VALUATION, TO  
5 ESTABLISH PROVISIONS REGARDING ADJUSTED BASIS ALLOCATION, TO ESTABLISH  
6 PROVISIONS REGARDING CERTAIN PART-YEAR RESIDENT AND NONRESIDENT OWNERS  
7 OF MULTISTATE ENTITIES AND TO MAKE TECHNICAL CORRECTIONS; DECLARING AN  
8 EMERGENCY AND PROVIDING RETROACTIVE APPLICATION.  
9

10 Be It Enacted by the Legislature of the State of Idaho:

11 SECTION 1. That Section 63-3022H, Idaho Code, be, and the same is hereby  
12 amended to read as follows:

13 63-3022H. DEDUCTION OF CAPITAL GAINS. (1) If an individual taxpayer  
14 reports capital gain net income in determining Idaho taxable income, eighty  
15 percent (80%) in taxable year 2001 and sixty percent (60%) in taxable years  
16 thereafter of the capital gain net income from the sale or exchange of quali-  
17 fied property shall be a deduction in determining Idaho taxable income.

18 (2) The deduction provided in this section is limited to the amount of  
19 the capital gain net income from all property included in taxable income.  
20 Gains treated as ordinary income by the Internal Revenue Code do not qualify  
21 for the deduction allowed in this section. The deduction otherwise allow-  
22 able under this section shall be reduced by the amount of any federal capital  
23 gains deduction relating to such property, but not below zero.

24 (3) Property held by an estate, trust, S corporation, partnership, lim-  
25 ited liability company or an individual is "qualified property" under this  
26 section if the property had an Idaho situs at the time of sale and is:

27 (a) Real property held at least twelve (12) months;

28 (b) Tangible personal property used in Idaho for at least twelve (12)  
29 months by a revenue-producing enterprise;

30 (c) Cattle or horses held for breeding, draft, dairy or sporting pur-  
31 poses for at least twenty-four (24) months in Idaho;

32 (d) Breeding livestock other than cattle or horses held at least twelve  
33 (12) months in Idaho;

34 (e) Timber grown in Idaho and held at least twenty-four (24) months;

35 (f) A partnership interest, other than a publicly traded partnership as  
36 defined by section 7704(b) of the Internal Revenue Code, held by an in-  
37 dividual for at least twelve (12) months, but only to the extent the gain  
38 from sale or exchange of the interest is attributable to real property  
39 held by the partnership that is classified as a capital asset by section  
40 1221 of the Internal Revenue Code and is qualified real property under  
41 paragraph (a) of this subsection. If the partnership holds property in  
42 addition to qualified real property, the portion of the capital gain at-

1 tributable to qualified real property shall be determined under one (1)  
 2 of the following methods at the option of the taxpayer:

3 (i) Fair market valuation. The capital gain from the sale or ex-  
 4 change of the interest attributable to qualified real property is  
 5 the amount by which the fair market value of the qualified real  
 6 property exceeds the adjusted basis of the qualified real property  
 7 minus any gain taxable as ordinary income. For purposes of this  
 8 section, fair market value must be established by:

9 1. A qualified appraisal as defined in 26 CFR 1.170A-  
 10 13(c) (3);

11 2. A county assessor valuation; or

12 3. Other evidence acceptable to the state tax commission; or

13 (ii) Adjusted basis allocation. The capital gain from the sale or  
 14 exchange of the interest attributable to qualified real property  
 15 is the proportion of the capital gain included in Idaho taxable  
 16 income that the adjusted basis of qualified real property held by  
 17 the partnership on the date of sale or exchange of the partnership  
 18 interest bears to the adjusted basis of all property held by the  
 19 partnership at least twelve (12) months prior to the date of sale  
 20 or exchange of the partnership interest. For this purpose, the ad-  
 21 justed basis shall be determined as provided in section 63-30220,  
 22 Idaho Code.

23 (4) In determining the period for which property subject to this sec-  
 24 tion has been held by a taxpayer, the provisions of section 1223 of the In-  
 25 ternal Revenue Code shall apply, except that the holding period shall not in-  
 26 clude the holding period of property given up in an exchange, when such prop-  
 27 erty would not have constituted qualified property under this section with-  
 28 out regard to meeting the holding period nor shall the holding period include  
 29 any time period in which the property subject to this section was held by a  
 30 corporation other than an S corporation. Notwithstanding the preceding sen-  
 31 tence, the holding period of qualifying property that was distributed by an  
 32 S corporation or an entity treated as a partnership to a person who was an  
 33 owner, member or partner at the time of the distribution shall, for that per-  
 34 son, include the amount of time that the S corporation or the entity held the  
 35 property, regardless of whether the distribution was a liquidating distri-  
 36 bution.

37 (45) As used in this section, "revenue-producing enterprise" means:

38 (a) The production, assembly, fabrication, manufacture, or processing  
 39 of any agricultural, mineral or manufactured product;

40 (b) The storage, warehousing, distribution, or sale at wholesale of any  
 41 products of agriculture, mining or manufacturing;

42 (c) The feeding of livestock at a feedlot;

43 (d) The operation of laboratories or other facilities for scientific,  
 44 agricultural, animal husbandry, or industrial research, development,  
 45 or testing.

46 (56) As used in this section, the term "real property" means land and in-  
 47 cludes the following:

48 (a) A "qualified conservation easement," as defined in section  
 49 2031(c) (8) (B) of the Internal Revenue Code, conveyed to a "qualified

1        "organization" as defined in section 170(h) of the Internal Revenue  
2        Code;

3        (b) Grazing permits or leases issued by the U.S. forest service, the bu-  
4        reau of land management or the Idaho department of lands, if such permit  
5        is transferred simultaneously with the transfer of the "base property";  
6        and

7        (c) Any other property defined in section 1250(c) of the Internal Rev-  
8        enue Code as "section 1250 property" conveyed in perpetuity, the trans-  
9        fer of which would be required to be in writing by section 9-503, Idaho  
10       Code.

11       (67) Property that has been depreciated pursuant to section 1245 of the  
12       Internal Revenue Code is not eligible to be treated as real property for pur-  
13       poses of this deduction.

14       (8) Part-year resident and nonresident owners of multistate entities  
15       shall compute the allowable deduction as prescribed in the rules of the state  
16       tax commission.

17       SECTION 2. An emergency existing therefor, which emergency is hereby  
18       declared to exist, this act shall be in full force and effect on and after its  
19       passage and approval, and retroactively to January 1, 2018.