

IN THE HOUSE OF REPRESENTATIVES

HOUSE BILL NO. 659

BY REVENUE AND TAXATION COMMITTEE

AN ACT

1 RELATING TO INCOME TAXES; AMENDING SECTION 63-3022, IDAHO CODE, AS AMENDED  
2 IN SECTION 3 OF HOUSE BILL NO. 463, AS ENACTED BY THE SECOND REGULAR  
3 SESSION OF THE SIXTY-FOURTH IDAHO LEGISLATURE, TO REVISE PROVISIONS  
4 REGARDING THE TAXATION OF A CORPORATION'S FOREIGN INCOME AND TO REVISE  
5 A CODE REFERENCE; AMENDING SECTION 63-3027C, IDAHO CODE, TO INCREASE  
6 THE DEDUCTION FROM IDAHO TAXABLE INCOME FOR FOREIGN DIVIDENDS AND TO  
7 MAKE TECHNICAL CORRECTIONS; AMENDING SECTION 63-3027E, IDAHO CODE, TO  
8 REMOVE LANGUAGE REGARDING CERTAIN CONDITIONAL WATER'S-EDGE CORPORATE  
9 REPORTING REQUIREMENTS AND TO MAKE TECHNICAL CORRECTIONS; AND DECLAR-  
10 ING AN EMERGENCY AND PROVIDING RETROACTIVE APPLICATION.  
11

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

13 SECTION 1. That Section 63-3022, Idaho Code, as amended in Section 3 of  
14 House Bill No. 463, as enacted by the Second Regular Session of the Sixty-  
15 fourth Legislature Idaho Legislature, be, and the same is hereby amended to  
16 read as follows:

17 63-3022. ADJUSTMENTS TO TAXABLE INCOME. The additions and subtrac-  
18 tions set forth in this section, and in sections 63-3022A through 63-3022U,  
19 Idaho Code, are to be applied to the extent allowed in computing Idaho tax-  
20 able income:

21 (a) Add any state and local taxes, as defined in section 164 of the In-  
22 ternal Revenue Code that are measured by net income, or for which a credit is  
23 allowable under section 63-3029, Idaho Code, and paid or accrued during the  
24 taxable year adjusted for state or local tax refunds used in arriving at tax-  
25 able income.

26 (b) Add the net operating loss deduction used in arriving at taxable in-  
27 come.

28 (c) (1) A net operating loss for any taxable year commencing on and af-  
29 ter January 1, 2000, but before January 1, 2013, shall be a net oper-  
30 ating loss carryback not to exceed a total of one hundred thousand dol-  
31 lars (\$100,000) to the two (2) immediately preceding taxable years. At  
32 the election of the taxpayer, the two (2) year carryback may be forgone  
33 and the loss subtracted from income received in taxable years arising in  
34 the next twenty (20) years succeeding the taxable year in which the loss  
35 arises in order until exhausted.

36 (2) A net operating loss for any taxable year commencing on or after  
37 January 1, 2013, shall be a net operating loss carryback not to exceed  
38 a total of one hundred thousand dollars (\$100,000) to the two (2) imme-  
39 diately preceding taxable years only if an amended return carrying the  
40 loss back is filed within one (1) year of the end of the taxable year of  
41 the net operating loss that results in such carryback.

1 (3) Any portion of the net operating loss not subtracted from income in  
2 the two (2) preceding years may be subtracted from income in the next  
3 twenty (20) years succeeding the taxable year in which the loss arises  
4 in order until exhausted. The sum of the deductions may not exceed the  
5 amount of the net operating loss deduction incurred. The carryback  
6 shall be limited to a total of fifty thousand dollars (\$50,000) in the  
7 case of an individual filing as married filing separate in the year of  
8 the loss.

9 (4) Net operating losses incurred by a corporation during a year in  
10 which such corporation did not transact business in Idaho or was not  
11 included in a group of corporations combined under subsection (t) of  
12 section 63-3027, Idaho Code, may not be subtracted. However, if at  
13 least one (1) corporation within a group of corporations combined under  
14 subsection (t) of section 63-3027, Idaho Code, was transacting business  
15 in Idaho during the taxable year in which the loss was incurred, then the  
16 net operating loss may be subtracted. Net operating losses incurred by  
17 a person, other than a corporation, in activities not taxable by Idaho  
18 may not be subtracted.

19 (5) The term "income" as used in this subsection means Idaho taxable in-  
20 come as defined in this chapter as modified by section 63-3021(b) (2),  
21 (3) and (4), Idaho Code.

22 (d) In the case of a corporation, add the amount deducted under the pro-  
23 visions of sections 243(a) and (c), 244, 245, 245A, 246A, 250(a) (1) (B) and  
24 965 of the Internal Revenue Code (relating to dividends received by corpora-  
25 tions and other special deductions) as limited by section 246(b) (1) of said  
26 code; and deduct an amount that is equal to a percentage determined by com-  
27 paring the deduction allowed by section 965 of the Internal Revenue Code to  
28 the amount included in income by said section 965, with such percentage ap-  
29 plied to the amount of Idaho income taxable by reason of section 965 after ex-  
30 cluding all of such income previously taxed in Idaho. For purposes of deter-  
31 mining the amount of income previously taxed in Idaho in any year subsequent  
32 to the year in which income is recognized pursuant to section 965 of the In-  
33 ternal Revenue Code, the Idaho apportionable share of the amount included in  
34 income pursuant to section 965 shall be considered income previously taxed  
35 in Idaho, without reduction by the deduction allowed by section 965.

36 (e) In the case of a corporation, subtract an amount determined under  
37 section 78 of the Internal Revenue Code to be taxable as dividends.

38 (f) Subtract the amount of any income received or accrued during the  
39 taxable year which is exempt from taxation by this state, under the provi-  
40 sions of any other law of this state or a law of the United States, if not pre-  
41 viously subtracted in arriving at taxable income.

42 (g) For the purpose of determining the Idaho taxable income of the bene-  
43 ficiary of a trust or of an estate:

44 (1) Distributable net income as defined for federal tax purposes shall  
45 be corrected for the other adjustments required by this section.

46 (2) Net operating losses attributable to a beneficiary of a trust or es-  
47 tate under section 642 of the Internal Revenue Code shall be a deduction  
48 for the beneficiary to the extent that income from the trust or estate  
49 would be attributable to this state under the provisions of this chap-  
50 ter.

1 (h) In the case of an individual who is on active duty as a full-time  
2 officer, enlistee or draftee, with the armed forces of the United States,  
3 which full-time duty is or will be continuous and uninterrupted for one hun-  
4 dred twenty (120) consecutive days or more, deduct compensation paid by the  
5 armed forces of the United States for services performed outside this state.  
6 The deduction is allowed only to the extent such income is included in tax-  
7 able income.

8 (i) In the case of a corporation, including any corporation included  
9 in a group of corporations combined under subsection (t) of section 63-3027,  
10 Idaho Code, add any capital loss or passive loss deducted which loss was in-  
11 curred during any year in which such corporation did not transact business in  
12 Idaho. However, do not add any capital loss deducted if a corporation, in-  
13 cluding any corporation in a group of corporations combined under subsection  
14 (t) of section 63-3027, Idaho Code, was transacting business in Idaho dur-  
15 ing the taxable year in which the loss was incurred. In the case of persons  
16 other than corporations, add any capital loss or passive loss deducted which  
17 was incurred in activities not taxable by Idaho at the time such loss was in-  
18 curred. In computing the income taxable to an S corporation or partnership  
19 under this section, deduction shall not be allowed for a carryover or carry-  
20 back of a net operating loss provided for in subsection (c) of this section,  
21 a passive loss or a capital loss provided for in section 1212 of the Internal  
22 Revenue Code.

23 (j) In the case of an individual, there shall be allowed as a deduction  
24 from gross income either paragraph (1) or (2) of this subsection at the op-  
25 tion of the taxpayer:

26 (1) The standard deduction as defined in section 63 of the Internal Rev-  
27 enue Code.

28 (2) Itemized deductions as defined in section 63 of the Internal Rev-  
29 enue Code except state or local taxes measured by net income and general  
30 sales taxes as either is defined in section 164 of the Internal Revenue  
31 Code.

32 (k) Add the taxable amount of any lump sum distribution excluded from  
33 gross income for federal income tax purposes under the ten (10) year averag-  
34 ing method. The taxable amount will include the ordinary income portion and  
35 the amount eligible for the capital gain election.

36 (l) Deduct any amounts included in gross income under the provisions of  
37 section 86 of the Internal Revenue Code relating to certain social security  
38 and railroad benefits.

39 (m) In the case of a self-employed individual, deduct the actual cost  
40 of premiums paid to secure worker's compensation insurance for coverage in  
41 Idaho, if such cost has not been deducted in arriving at taxable income.

42 (n) In the case of an individual for any tax period ending on or prior  
43 to December 31, 2016, deduct the amount contributed to a college savings pro-  
44 gram but not more than four thousand dollars (\$4,000) per tax year. In the  
45 case of an individual and for any tax period starting on or after January 1,  
46 2017, deduct the amount contributed to a college savings program, but not  
47 more than six thousand dollars (\$6,000) per tax year. For those married and  
48 filing jointly, deduct the amount contributed to a college savings program,  
49 but not more than twice of that allowed for an individual. To be qualified  
50 for this deduction, the contribution must be made during the taxable year and

1 made to an Idaho college savings program account as described in chapter 54,  
2 title 33, Idaho Code.

3 (o) In the case of an individual, add the amount of a nonqualified with-  
4 drawal from an individual trust account or savings account established pur-  
5 suant to chapter 54, title 33, Idaho Code, less any amount of such nonqual-  
6 ified withdrawal included in the individual's federal gross income pursuant  
7 to section 529 of the Internal Revenue Code.

8 (p) In the case of an individual, add the amount of a withdrawal from an  
9 individual trust account or savings account established pursuant to chapter  
10 54, title 33, Idaho Code, transferred to a qualified tuition program, as de-  
11 fined in section 529 of the Internal Revenue Code, that is operated by a state  
12 other than Idaho. The addition provided in this subsection is limited to the  
13 amount of the contributions to the Idaho individual trust account or savings  
14 account by the account owner that was deducted on the account owner's income  
15 tax return for the year of the transfer and the prior taxable year.

16 SECTION 2. That Section 63-3027C, Idaho Code, be, and the same is hereby  
17 amended to read as follows:

18 63-3027C. ELECTION IS BINDING -- TREATMENT OF DIVIDENDS. (a) A wa-  
19 ter's-edge election shall be made in the original return for a year and shall  
20 be binding for all years thereafter, except as follows:

21 (1) If, in the future, the United States supreme court or the supreme  
22 court of the state of Idaho rules that there is a state or federal con-  
23 stitutional right for a group of corporations to use the worldwide uni-  
24 tary method, a water's-edge combined group of corporations may, without  
25 permission of the state tax commission, change its future filing to the  
26 worldwide unitary method.

27 (2) Any changes to use of the water's-edge method or any other changes  
28 beyond those described in paragraph (1) of this subsection may ~~only~~ oc-  
29 cur only with the written permission of the state tax commission.

30 (3) No water's-edge election shall be made for an income year begin-  
31 ning prior to the operative date of sections 63-3027B through 63-3027E,  
32 Idaho Code.

33 (b) When disregarding an election or granting a change of election, the  
34 state tax commission shall impose conditions ~~which that~~ are necessary to  
35 prevent the avoidance of tax or to clearly reflect income for the period the  
36 election was made.

37 (c) For purposes of this section:

38 (1) Dividends received from payors incorporated outside the fifty (50)  
39 states and District of Columbia, to the extent taxable, shall be treated  
40 as income subject to apportionment.

41 (2) The income of corporations filing elections under section 936 of  
42 the Internal Revenue Code shall be deemed dividends received from pay-  
43 ors incorporated outside the fifty (50) states and District of Colum-  
44 bia.

45 (3) ~~Eighty-five per cent~~ One hundred percent (~~85~~100%) of all dividends  
46 described in ~~subsection (c) paragraph (1) or (c)(2)~~ of this subsection  
47 shall be excluded from income subject to apportionment.

48 (4) The dividends subject to apportionment shall be in lieu of any ex-  
49 penses attributable to such dividend income.

1 (5) Any actual dividend received from a corporation filing an election  
2 under section 936 of the Internal Revenue Code shall be eliminated from  
3 income.

4 (d) Any dividend from any payor required to be combined under the wa-  
5 ter's-edge election shall be eliminated from the calculation of appor-  
6 tionable income. Dividends received from a corporation described in section 922  
7 of the Internal Revenue Code (defining "FSC") will be treated as follows:

8 (1) Dividends received from an FSC will be eliminated in the proportion  
9 that FSC federal taxable income for the year, out of which the dividend  
10 was paid, bears to the total FSC income before taxes for such year.

11 (2) The portion of FSC dividend not eliminated under paragraph (1) of  
12 this subsection will be subject to the ~~eighty-five per cent~~ one hundred  
13 percent (~~85~~100%) exclusion provided for in subsection (c) (3) of this  
14 section.

15 (e) For purposes of this section:

16 (1) Amounts included in income by reference to subpart F of part III of  
17 subchapter N of chapter 1 of the Internal Revenue Code shall constitute  
18 dividends from payors outside the fifty (50) states and District of Co-  
19 lumbia;

20 (2) Amounts included in income under part VI of subchapter P of chapter  
21 1 of the Internal Revenue Code shall constitute dividends from payors  
22 outside the fifty (50) states and the District of Columbia; and

23 (3) Deemed distributions defined by Ssection 78 of the Internal Rev-  
24 enue Code shall be excluded from the income of the water's-edge combined  
25 group.

26 SECTION 3. That Section 63-3027E, Idaho Code, be, and the same is hereby  
27 amended to read as follows:

28 63-3027E. OPERATIVE DATES. ~~(a)~~ Sections 63-3027B through 63-3027E,  
29 Idaho Code, shall be operative for the computation of taxes for the earlier  
30 of either of the following:

31 (1) Taxable years beginning on or after January 1, 1988.

32 (2) Taxable years beginning on or after January 1 of the year after the  
33 year in which the board of examiners, upon advice of the attorney general,  
34 certifies to the state tax commission that action has been taken by the  
35 United States, whether by statute, regulation, executive order, or any other  
36 means as may be appropriate, to comply substantially with the following:

37 (Aa) A requirement that any corporation required to file a United  
38 States tax return or ~~which that~~ could be included in a consolidated fed-  
39 eral tax return be required to file with the Internal Revenue Service  
40 a domestic disclosure spreadsheet if its payroll, property, or sales  
41 in a foreign country exceeds one million dollars (\$1,000,000). The  
42 spreadsheet shall provide for full disclosure as to the income reported  
43 to each state, the state tax liability, and the method used for appor-  
44 tioning or allocating income to the states, and any other information as  
45 provided for by regulations as may be necessary to determine properly  
46 the amount of taxes due to each state and to identify the water's-edge  
47 corporate group and those of its affiliates of which more than twenty  
48 ~~per cent~~ percent (20%) of the voting stock is directly or indirectly  
49 owned or controlled by a common owner or owners-;

1 (Bb) That the information filed pursuant to paragraph (2) (Aa) of this  
2 subsection will be available to qualified states. A "qualified state"  
3 is any state that does not require the use of the worldwide unitary  
4 method of taxation except in circumstances substantially similar to  
5 those authorized in subsection (c) of section 63-3027B, Idaho Code; and  
6 and

7 (Cc) That qualified states are authorized access to all material de-  
8 veloped by the Internal Revenue Service in its examination of multina-  
9 tional operations.

10 ~~(b) If sections 63-3027B through 63-3027E, Idaho Code, become opera-~~  
11 ~~tive pursuant to paragraph (1) of subsection (a) of this section, the tax~~  
12 ~~commission may require, and taxpayers described in this subsection must~~  
13 ~~file, no later than six months after filing the Idaho income tax return, a~~  
14 ~~spreadsheet to provide disclosure as to the income reported for the year~~  
15 ~~to the other states that require unitary combined reporting, the tax lia-~~  
16 ~~bility for each such state, the method used for allocating or apportioning~~  
17 ~~income to such states, the property, payroll, and destination sales of the~~  
18 ~~water's-edge corporate group in each state, and to identify the water's-edge~~  
19 ~~corporate group and those of its affiliates of which more than twenty per~~  
20 ~~cent (20%) of the voting stock is directly or indirectly owned or controlled~~  
21 ~~by a common owner or owners. The provisions of this subsection shall apply~~  
22 ~~only to corporations which both make a water's-edge election and have dur-~~  
23 ~~ing the taxable year, payroll, property or sales in a foreign country which~~  
24 ~~exceeds one million dollars (\$1,000,000). Notwithstanding the requirement~~  
25 ~~to file a spreadsheet in any tax year, a taxpayer may forego filing such a~~  
26 ~~spreadsheet by submitting to the state tax commission a written declara-~~  
27 ~~tion of its intention to forego filing such spreadsheet for such year. In~~  
28 ~~the event such declaration is filed in any tax year, no spreadsheet shall~~  
29 ~~be required of such taxpayer and the percentage to be applied under section~~  
30 ~~63-3027C(c) (3) for such year shall be eighty per cent (80%) rather than~~  
31 ~~eighty-five per cent (85%).~~

32 SECTION 4. An emergency existing therefor, which emergency is hereby  
33 declared to exist, this act shall be in full force and effect on and after its  
34 passage and approval, and retroactively to January 1, 2018; provided that  
35 the amendment in Section 1 of this act to Section 63-3022(d), Idaho Code, as  
36 it relates to the deduction of a percentage of the income recognized by Sec-  
37 tion 965 of the Internal Revenue Code, shall be effective for tax years com-  
38 mencing on and after January 1, 2017.