

IN THE HOUSE OF REPRESENTATIVES

HOUSE BILL NO. 510

BY REVENUE AND TAXATION COMMITTEE

AN ACT

1 RELATING TO INCOME TAXES; AMENDING SECTION 63-3026B, IDAHO CODE, TO REVISE
2 PROVISIONS REGARDING STATE AND LOCAL TAXATION TREATMENT FOR AFFECTED
3 BUSINESS ENTITIES; AND DECLARING AN EMERGENCY AND PROVIDING RETROAC-
4 TIVE APPLICATION.
5

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

7 SECTION 1. That Section 63-3026B, Idaho Code, be, and the same is hereby
8 amended to read as follows:

9 63-3026B. AFFECTED BUSINESS ENTITIES -- STATE AND LOCAL TAXATION
10 TREATMENT. (1) As used in this section:

11 (a) "Affected business entity" means any partnership or S corporation
12 that elects to be subject to tax pursuant to this section.

13 (b) "Affected business entity income" means, in the case of an electing
14 affected business entity, all items of income, gain, loss, or deduction
15 derived from or connected with Idaho sources to the extent they are in-
16 cluded in the taxable income of a member under this chapter.

17 (c) "Direct member" means a member that holds an interest directly in an
18 affected business entity.

19 (ed) "Indirect member" means a member that itself holds an interest,
20 through a direct or indirect member that is a partnership or S corpora-
21 tion, in an affected business entity.

22 (e) "Individual" also means trusts and estates.

23 (ef) "Member" means:

24 (i) A shareholder of an S corporation, when that shareholder is
25 subject to tax under this chapter;

26 (ii) A partner in a general partnership, a limited partnership, or
27 a limited liability partnership, when that partner is subject to
28 tax under this chapter; or

29 (iii) A member of a limited liability company that is treated as a
30 partnership or an S corporation for federal income tax purposes,
31 when that member is subject to tax under this chapter.

32 (eg) "Partnership" has the meaning provided in section 63-3006B,
33 Idaho Code. "Partnership" includes a limited liability company that is
34 treated as a partnership for federal income tax purposes as described in
35 section 63-3006A, Idaho Code.

36 (fh) "S corporation" means a corporation or limited liability company
37 that is treated as an S corporation for federal income tax purposes.

38 (gi) "Taxable year" means the taxable year of a partnership or an S cor-
39 poration for federal income tax purposes.

40 (2) (a) A partnership or an S corporation may elect in the manner set
41 forth in this section to become an affected business entity required to

1 pay the tax under this section in any taxable year. A separate election
2 must be made for each taxable year.

3 (b) An election under this section must be made on a form and in the man-
4 ner as the state tax commission prescribes by rule or instruction.

5 (c) An election under this section may be made for any taxable year by
6 filing the election with a timely filed original return for such taxable
7 year.

8 (d) An election made under this section must be signed by:

9 (i) Each member of the electing entity who is a member subject to
10 tax under this chapter at the time the election is filed; or

11 (ii) Any officer, manager, or member of the electing entity who is
12 authorized under local law or by the entity's organizational docu-
13 ments to make the election and who represents under penalty of per-
14 jury that he has such authorization.

15 (e) An affected business entity is required to pay the tax imposed by
16 section 63-3082, Idaho Code, for each member subject to tax under this
17 chapter.

18 (3) Each affected business entity that is a partnership or an S corpora-
19 tion transacting business in this state shall, on or before ~~April 15~~ the fif-
20 teenth day of the fourth month following the close of each taxable year, pay a
21 tax in an amount determined as follows:

22 (a) ~~Add the separately and nonseparately computed items as described in~~
23 ~~section 702(a) of the Internal Revenue Code for a partnership, or as de-~~
24 ~~scribed in section 1366 of the Internal Revenue Code for an S corpora-~~
25 ~~tion, to the extent all of the affected business entity income derived~~
26 ~~from or connected with sources within this state, as determined under~~
27 ~~the provisions of sections 63-3026 and 63-3026A, Idaho Code~~ this chap-
28 ter;

29 (b) Increase or decrease the sum from paragraph (a) of this subsection
30 according to the modifications permitted or required under this chap-
31 ter that relate to an item of the affected business entity's income,
32 gain, loss, or deduction, to the extent derived from or connected with
33 sources within this state, as determined under the provisions of sec-
34 tions 63-3026 and 63-3026A, Idaho Code; and for computing Idaho taxable
35 income, to the extent they are attributable to members subject to the
36 tax under this chapter;

37 (c) Multiply the result from paragraph (b) of this subsection by the
38 tax rate applicable to corporations provided in section 63-3025, Idaho
39 Code; and

40 (d) Apply any allowable credits earned by the affected business entity
41 that would have been claimed on the member's Idaho tax returns. Any un-
42 used credits that are allowed by law to be carried forward to succeeding
43 taxable years may be claimed in succeeding taxable years for which the
44 affected business entity elects to be subject to tax pursuant to this
45 section. If the affected business entity does not make the election un-
46 der this section in any succeeding taxable year, the unused credits will
47 flow through to the members as otherwise permitted under this chapter.

48 (4) If the amount calculated under subsection (3) (b) of this section
49 results in a net operating loss, such net operating loss may be carried
50 forward to succeeding taxable years for which the affected business entity

1 elects to be subject to tax pursuant to this section until fully used. If the
2 affected business entity does not make the election under this section in any
3 succeeding taxable year, the unused net operating loss will flow through to
4 the members as otherwise permitted under this chapter.

5 (5) If an affected business entity is a direct or indirect member of an-
6 other affected business entity, the member affected business entity shall,
7 when calculating its net income or loss pursuant to subsection (3) (b) of this
8 section, subtract its distributive share of income or add its distributive
9 share of loss from the affected business entity in which it is a direct or in-
10 direct member to the extent that the income or loss was derived from or con-
11 nected with sources within this state.

12 (6) A nonresident individual who is a member is not required to file an
13 income tax return under section 63-3030, Idaho Code, for any taxable year in
14 which the only source of income derived from or connected with sources within
15 the state for such member, or the member and the member's spouse if a joint
16 federal income tax return is or shall be filed, is from one (1) or more af-
17 fected business entities and such affected business entity or entities file
18 and pay the tax due under this section.

19 (7) Each partnership and S corporation shall report to each of its mem-
20 bers, for each taxable year, such member's direct pro rata share of the tax
21 imposed under this section on such partnership or S corporation if it is an
22 affected business entity and its indirect pro rata share of the tax imposed
23 on any affected business entity in which such affected business entity is a
24 direct or indirect member. Such pro rata share of the tax shall be calculated
25 by excluding the share of any member not subject to tax under this chapter.

26 (8) (a) Each individual who is a member and is subject to tax under sec-
27 tion 63-3024, Idaho Code, is entitled to a credit against such tax. The
28 credit will be in an amount equal to the individual's direct and indi-
29 rect pro rata share of the tax paid under this section by any affected
30 business entity of which the individual is a direct or indirect member.
31 If the amount of the credit allowed pursuant to this paragraph exceeds
32 the individual's tax liability for the tax imposed under this chapter,
33 the individual will be paid a refund equal to the balance of the unused
34 credit. Such pro rata share of the tax credit shall be calculated by ex-
35 cluding the share of any member not subject to tax under this chapter.

36 (b) Each individual who is a member and is subject to the tax under
37 section 63-3024, Idaho Code, as a resident or a part-year resident of
38 this state is entitled to a credit against such tax for the individual's
39 direct and indirect pro rata share of taxes paid to another state of the
40 United States or the District of Columbia, on income of any partnership
41 or S corporation of which the individual is a member that is derived
42 therefrom, ~~provided the taxes paid to another state of the United States~~
43 ~~or the District of Columbia results from a tax that the state tax commis-~~
44 ~~sion determines is substantially similar to the tax imposed under this~~
45 ~~section.~~ Any such credit will be calculated in the manner prescribed by
46 the state tax commission and shall be consistent with the provisions of
47 section 63-3029, Idaho Code. Such pro rata share of the tax credit shall
48 be calculated by excluding the share of any member not subject to tax
49 under this chapter.

1 (9) Each corporation that is a member and is subject to the tax im-
2 posed under section 63-3025 or 63-3025A, Idaho Code, is entitled to a credit
3 against such tax. The credit will be in an amount equal to the corporation's
4 direct and indirect pro rata share of the tax paid under this section by any
5 affected business entity of which the corporation is a member. Such credit
6 will be applied after all other applicable credits have been applied. Any
7 balance of the credit that is not used in the taxable year during which the
8 corporation reports the net income from such affected business entities will
9 be paid as a refund to the corporation. Such pro rata share of the tax credit
10 shall be calculated by excluding the share of any member not subject to tax
11 under this chapter.

12 (10) The penalty and interest provisions and the collection and en-
13 forcement procedures provided by sections 63-3038 through 63-3040, 63-3042
14 through 63-3065A, 63-3071, 63-3075, and 63-3078, Idaho Code, shall apply and
15 be available to the state tax commission for enforcement of the provisions of
16 this section and collection of any amounts due under this section. Said sec-
17 tions shall, for this purpose, be considered part of this section, and wher-
18 ever liens or any other proceedings are defined as income tax liens or pro-
19 ceedings, they shall, when applied in enforcement or collection under this
20 section, be described as affected business entity tax liens and proceedings.

21 SECTION 2. An emergency existing therefor, which emergency is hereby
22 declared to exist, this act shall be in full force and effect on and after its
23 passage and approval, and retroactively to January 1, 2021.