

IN THE HOUSE OF REPRESENTATIVES

HOUSE BILL NO. 13

BY REVENUE AND TAXATION COMMITTEE

AN ACT

1 RELATING TO INCOME TAX; AMENDING CHAPTER 30, TITLE 63, IDAHO CODE, BY THE  
2 ADDITION OF A NEW SECTION 63-3070, IDAHO CODE, TO PROVIDE STATE PROCE-  
3 DURES FOR CERTAIN PARTNERSHIPS TO REPORT ADJUSTMENTS TO FEDERAL TAXABLE  
4 INCOME; AND DECLARING AN EMERGENCY AND PROVIDING RETROACTIVE APPLICA-  
5 TION.  
6

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

8 SECTION 1. That Chapter 30, Title 63, Idaho Code, be, and the same is  
9 hereby amended by the addition thereto of a NEW SECTION, to be known and des-  
10 ignated as Section 63-3070, Idaho Code, and to read as follows:

11 63-3070. PARTNERSHIP INCOME -- FEDERAL ADJUSTMENTS. (1) The defini-  
12 tions set forth in this chapter shall apply to this section unless modified  
13 in this section or unless the context clearly requires another definition.

14 (2) Definitions. As used in this section:

15 (a) "Administrative adjustment request" means a request for an admin-  
16 istrative adjustment filed by a partnership under section 6227 of the  
17 Internal Revenue Code.

18 (b) "Audited partnership" means a partnership subject to a partnership  
19 level audit pursuant to section 6223(a) of the Internal Revenue Code,  
20 resulting in a federal adjustment.

21 (c) "Corporate partner" means a partner subject to tax under section  
22 63-3025 or 63-3025A, Idaho Code.

23 (d) "Direct partner" means a partner that holds an interest directly in  
24 a partnership or pass-through entity.

25 (e) "Exempt partner" means a partner that is exempt from taxation under  
26 the Internal Revenue Code except on unrelated business taxable income.

27 (f) "Federal adjustment" means a change to an item or amount determined  
28 under the Internal Revenue Code that is used by a taxpayer to compute  
29 Idaho state income tax owed, whether that change results from action by  
30 the internal revenue service, including a partnership level audit, or  
31 the filing of an amended federal return, federal refund claim, or an ad-  
32 ministrative adjustment request by the taxpayer.

33 (g) "Federal partnership representative" means the person the partner-  
34 ship designates for the taxable year as the partnership's representa-  
35 tive, or the person the internal revenue service has appointed to act as  
36 the federal partnership representative pursuant to section 6223(a) of  
37 the Internal Revenue Code.

38 (h) "Final federal adjustment" means a federal adjustment that can no  
39 longer be modified because the final determination date for that fed-  
40 eral adjustment has passed.

41 (i) "Final federal determination" has the same meaning as is given that  
42 term in sections 63-3068(f) and 63-3072(d), Idaho Code.

1 (j) "Indirect partner" means a partner in a partnership or pass-through  
2 entity that itself holds an interest directly or through another indi-  
3 rect partner in a partnership or pass-through entity.

4 (k) "Nonresident partner" means an individual, trust, or estate part-  
5 ner that is not a resident partner.

6 (l) "Partner" means a person that holds an interest directly or indi-  
7 rectly in a partnership or other pass-through entity.

8 (m) "Partnership level audit" means an examination by the internal rev-  
9 enue service at the partnership level pursuant to sections 6221 through  
10 6241 of the Internal Revenue Code, as enacted by public law 114-74,  
11 which results in federal adjustments.

12 (n) "Reallocation adjustment" means a federal adjustment resulting  
13 from a partnership level audit or an administrative adjustment request  
14 that changes the share of one (1) or more items of partnership income,  
15 gain, loss, expense, or credit allocated to direct partners.

16 (o) "Report of federal adjustments" means the taxpayer's report of fi-  
17 nal federal adjustments to the Idaho state tax commission, including an  
18 amended Idaho income tax return, information return, or a uniform mul-  
19 tistate report.

20 (p) "Resident partner" means an individual, trust, or estate partner  
21 that is a resident in Idaho under section 63-3013, Idaho Code, for the  
22 relevant tax period.

23 (q) "Reviewed year" means the taxable year of a partnership that is sub-  
24 ject to a partnership level audit from which federal adjustments arise.

25 (r) "Tiered partner" means any partner that is a partnership or pass-  
26 through entity.

27 (s) "Unrelated business taxable income" has the same meaning as pro-  
28 vided in section 512(a) of the Internal Revenue Code.

29 (3) Reporting adjustments to federal taxable income -- general rule.  
30 Except in the case of final federal adjustments required to be reported by  
31 a partnership and its partners using the procedures set forth in subsection  
32 (4) of this section, and final federal adjustments required to be reported  
33 for federal purposes under section 6225(a)(2) of the Internal Revenue Code,  
34 a taxpayer shall report and pay any Idaho tax due with respect to final fed-  
35 eral adjustments arising from an audit or other action by the internal rev-  
36 enue service or reported by the taxpayer on a timely filed amended federal  
37 income tax return, including a return or other similar report filed pursuant  
38 to section 6225(c)(2) of the Internal Revenue Code, or a federal claim for  
39 refund by filing a report of federal adjustments with the state tax commis-  
40 sion for the reviewed year and, if applicable, paying the additional Idaho  
41 tax owed by the taxpayer no later than one hundred twenty (120) days after the  
42 final determination date, pursuant to section 63-3069, Idaho Code.

43 (4) Reporting federal adjustments -- partnership level audit and ad-  
44 ministrative adjustment request. Except for adjustments required to be re-  
45 ported for federal purposes pursuant to section 6225(a)(2) of the Internal  
46 Revenue Code, and the distributive share of adjustments that has been re-  
47 ported as required under subsection (3) of this section, partnerships and  
48 partners shall report final federal adjustments arising from a partnership  
49 level audit or an administrative adjustment request and make payments as re-  
50 quired.

1 (a) State partnership representative.

2 (i) With respect to an action required or permitted to be taken by  
3 a partnership under this subsection, and a proceeding under sec-  
4 tion 63-3048, Idaho Code, with respect to that action, the state  
5 partnership representative for the reviewed year shall have the  
6 sole authority to act on behalf of the partnership. The partner-  
7 ship's direct partners and indirect partners shall be bound by  
8 those actions.

9 (ii) The state partnership representative for the reviewed year  
10 is the partnership's federal partnership representative unless  
11 the partnership designates in writing another person as its state  
12 partnership representative.

13 (iii) The state tax commission may establish reasonable qualifi-  
14 cations and procedures for designating a person, other than the  
15 federal partnership representative, to be the state partnership  
16 representative.

17 (b) Reporting and payment requirements for partnerships subject to a  
18 final federal adjustment and their direct partners. Final federal ad-  
19 justments subject to the requirements of this subsection, except for  
20 those subject to a properly made election under paragraph (c) of this  
21 subsection, shall be reported as follows:

22 (i) No later than one hundred twenty (120) days after the final  
23 federal determination, the partnership shall:

24 1. File a completed report of federal adjustments, includ-  
25 ing information required by Idaho law, with the state tax  
26 commission;

27 2. Notify each of its direct partners of their distributive  
28 share of the final federal adjustments, including informa-  
29 tion required by the state tax commission; and

30 3. File an amended composite return for direct partners as  
31 required under section 63-3022L, Idaho Code, or an amended  
32 withholding return for direct partners as required under  
33 section 63-3035, Idaho Code, and pay the additional amount  
34 under sections 63-3024 and 63-3025, Idaho Code, that would  
35 have been due had the final federal adjustments been re-  
36 ported properly as required.

37 (ii) Except as provided under section 63-3025, Idaho Code, no  
38 later than one hundred twenty (120) days after the final fed-  
39 eral determination date, each direct partner taxed under section  
40 63-3025, Idaho Code, shall:

41 1. File a report of federal adjustments reporting its dis-  
42 tributive share of the adjustments reported under subpara-  
43 graph (i)2. of this paragraph, as required under section  
44 63-3069, Idaho Code; and

45 2. Pay any additional amount of tax due as if the report of  
46 federal adjustments had been properly reported, plus any  
47 penalty and interest due under section 63-3075, Idaho Code,  
48 and less any credit for related amounts paid or withheld and  
49 remitted on behalf of the direct partner under subparagraph  
50 (i)3. of this paragraph.

1 (c) Election -- partnership pays. Subject to the limitations in sub-  
2 paragraph (iii) of this subsection, an audited partnership making an  
3 election under this subsection shall:

4 (i) No later than one hundred twenty (120) days after the final  
5 federal determination date, file a completed report of federal ad-  
6 justments, including information as required by section 63-3069,  
7 Idaho Code, and notify the state tax commission that it is making  
8 the election under this subsection;

9 (ii) No later than one hundred twenty (120) days after the final  
10 federal determination date, pay, in lieu of taxes owed by its di-  
11 rect and indirect partners, an amount determined according to this  
12 subparagraph:

13 1. Exclude from final federal adjustments the distributive  
14 share of these adjustments reported to a direct exempt part-  
15 ner not subject to tax under section 63-3025, Idaho Code;

16 2. For the total distributive shares of the remaining final  
17 federal adjustments reported to direct corporate partners  
18 subject to tax under section 63-3025, Idaho Code, and to di-  
19 rect exempt partners subject to tax under section 63-3025,  
20 Idaho Code, apportion and allocate such adjustments as  
21 provided under section 63-3027, Idaho Code, and multiply  
22 the resulting amount by the highest tax rate under section  
23 63-3024, Idaho Code;

24 3. For the total distributive shares of the remaining final  
25 federal adjustments reported to nonresident direct partners  
26 subject to tax under section 63-3024, Idaho Code, determine  
27 the amount of the adjustments that is Idaho source income un-  
28 der section 63-3026A, Idaho Code, and multiply the resulting  
29 amount by the highest tax rate under section 63-3024, Idaho  
30 Code;

31 4. For the total distributive shares of the remaining final  
32 federal adjustments reported to tiered partners:

33 (A) Determine the amount of the adjustments of a type  
34 subject to sourcing to Idaho under section 63-3026A,  
35 Idaho Code; then determine the portion of this amount  
36 that would be sourced to the state applying Idaho in-  
37 come tax administrative rules;

38 (B) Determine the amount of the adjustments of a type  
39 not subject to sourcing to Idaho by a nonresident part-  
40 ner under section 63-3026A, Idaho Code;

41 (C) Of the amount determined in subparagraphs  
42 (ii)4.(A) and (B) of this paragraph, determine the por-  
43 tion that, pursuant to Idaho income tax administrative  
44 rules, is properly allocable to nonresident indirect  
45 partners or other partners not subject to tax on the  
46 adjustments or the portion that can be excluded under  
47 procedures for modified reporting and payment method  
48 allowed under paragraph (e) of this subsection;

49 5. Multiply the total of the amounts determined in subpara-  
50 graphs (ii)4.(A) and (B) of this paragraph reduced by the

1 amount determined in subparagraph (ii)4.(C) of this para-  
2 graph by the highest tax rate under section 63-3024, Idaho  
3 Code;

4 6. For the total distributive shares of the remaining final  
5 federal adjustments reported to resident direct partners  
6 subject to tax under section 63-3024, Idaho Code, multiply  
7 that amount by the highest tax rate under section 63-3024,  
8 Idaho Code; and

9 7. Add the amounts determined in subparagraphs (ii)2., 3.,  
10 5., and 6. of this paragraph, along with penalty and inter-  
11 est as provided in section 63-3046, Idaho Code.

12 (iii) Final federal adjustments subject to this election exclude:

13 1. The distributive share of final audit adjustments that  
14 under section 63-3027, Idaho Code, and Idaho income tax ad-  
15 ministrative rules, must be included in the unitary business  
16 income of any direct or indirect corporate partner, provided  
17 it can be reasonably determined by the audited partnership;  
18 and

19 2. Any final federal adjustments resulting from an adminis-  
20 trative adjustment request.

21 (iv) An audited partnership not otherwise subject to any report-  
22 ing or payment obligation to the state of Idaho that makes an elec-  
23 tion under this subsection consents to be subject to Idaho laws re-  
24 lating to reporting, assessment, payment, and collection of Idaho  
25 tax calculated under the election.

26 (d) Tiered partners. The direct and indirect partners of an audited  
27 partnership that are tiered partners, and all of the partners of those  
28 tiered partners that are subject to tax under sections 63-3024 and  
29 63-3025, Idaho Code, are subject to the reporting and payment require-  
30 ments of paragraph (b) of this subsection, and the tiered partners are  
31 entitled to make the elections provided in paragraphs (c) and (e) of  
32 this subsection. The tiered partners or their partners shall make the  
33 required reports and payments no later than one hundred twenty (120)  
34 days after the time for filing and furnishing statements to tiered  
35 partners and their partners as established under section 6226 of the In-  
36 ternal Revenue Code and the federal regulations thereunder. The state  
37 tax commission may promulgate rules to establish procedures and interim  
38 time periods for the reports and payments required by tiered partners  
39 and their partners and for making the elections under this subsection.

40 (e) Modified reporting and payment method. Under procedures adopted  
41 by and subject to the approval of the state tax commission, an audited  
42 partnership or tiered partner may enter into an agreement with the state  
43 tax commission to use an alternative reporting and payment method, in-  
44 cluding applicable time requirements or any other provision of this  
45 subsection, if the audited partnership or tiered partner demonstrates  
46 that the requested method will reasonably provide for the reporting and  
47 payment of taxes, penalties, and interest due under the provisions of  
48 this subsection. Application for approval of an alternative reporting  
49 and payment method must be made by the audited partnership or tiered

1 partner within the time for election as provided in this paragraph or  
2 paragraph (c) or this subsection, as appropriate.

3 (f) Effect of election by audited partnership or tiered partner and  
4 payment of amount due.

5 (i) The election made pursuant to paragraph (c) or (e) of this  
6 subsection is irrevocable unless the state tax commission, in its  
7 discretion, determines otherwise.

8 (ii) If properly reported and paid by the audited partnership or  
9 tiered partner, the amount determined in paragraph (c) (ii) of this  
10 subsection, or similarly under an optional election under para-  
11 graph (e) of this subsection, will be treated as paid in lieu of  
12 taxes owed by its direct and indirect partners, to the extent ap-  
13 plicable, on the same final federal adjustments. The direct part-  
14 ners or indirect partners may not take any deduction or credit for  
15 this amount or claim a refund of the amount in this state. Nothing  
16 in this paragraph precludes a direct resident partner from claim-  
17 ing a credit against taxes paid to this state pursuant to section  
18 63-3029, Idaho Code, for any amounts paid by the audited partner-  
19 ship or tiered partner on the resident partner's behalf to another  
20 state or local tax jurisdiction in accordance with the provisions  
21 of section 63-3029, Idaho Code.

22 (g) Failure of an audited partnership or tiered partner to report or  
23 pay. Nothing in this section prevents the state tax commission from  
24 assessing direct partners or indirect partners for taxes they owe, us-  
25 ing the best information available, in the event that a partnership or  
26 tiered partner fails for any reason to timely make any report or payment  
27 required by this section.

28 (5) Adjustments of Idaho tax, interest, and penalties arising from ad-  
29 justments to federal taxable income -- statute of limitations. The state tax  
30 commission will make adjustments as needed for any additional tax, interest,  
31 and penalties arising from final federal adjustments arising from an audit  
32 by the internal revenue service, including a partnership level audit, or re-  
33 ported by the taxpayer on an amended federal income tax return or as part of  
34 an administrative adjustment request by the following dates:

35 (a) Timely reported federal adjustments. If a taxpayer files with the  
36 state tax commission a report of federal adjustments or an amended Idaho  
37 tax return as required within the period specified in subsection (3) or  
38 (4) of this section, the state tax commission may adjust any amounts,  
39 including in-lieu-of amounts, taxes, interest, and penalties arising  
40 from those federal adjustments if the state tax commission issues a no-  
41 tice of deficiency determination to the taxpayer no later than:

42 (i) The expiration of the limitations period specified in section  
43 63-3068 or 63-3072, Idaho Code; or

44 (ii) The expiration of the one (1) year period following the date  
45 of the filing with the state tax commission of the report of fed-  
46 eral adjustments.

47 (b) Untimely reported federal adjustments. If the taxpayer fails to  
48 file the report of federal adjustments within the period specified in  
49 subsection (3) or (4) of this section, as appropriate, or the report of  
50 federal adjustments filed by the taxpayer omits final federal adjust-

1           ments or understates the correct amount of tax owed, the state tax com-  
2           mission may assess amounts or additional amounts, taxes, interest, and  
3           penalties arising from the report of federal adjustments, if it mails a  
4           notice of deficiency determination to the taxpayer by a date that is the  
5           latest of the following:

6           (i) The expiration of the limitations period specified in section  
7           63-3068, Idaho Code;

8           (ii) The expiration of the one (1) year period following the date  
9           the report of federal adjustments was filed with the state tax com-  
10          mission; or

11          (iii) Absent fraud, the expiration of the six (6) year period fol-  
12          lowing the final federal determination date.

13          (6) Estimated Idaho tax payments during the course of a federal au-  
14          dit. A taxpayer may make estimated payments to the state tax commission,  
15          following the process prescribed by the state tax commission, of Idaho tax  
16          expected to result from a pending internal revenue service audit prior to  
17          the due date of the report of federal adjustments without having to file the  
18          report with the state tax commission. The estimated tax payments shall be  
19          credited against any tax liability ultimately found to be due to Idaho and  
20          will limit the accrual of further statutory interest on that amount. If the  
21          estimated tax payments exceed the final tax liability and statutory inter-  
22          est ultimately determined to be due, the taxpayer is entitled to a refund  
23          or credit for the excess, provided the taxpayer files a report of federal  
24          adjustments or claim for refund or credit of tax pursuant to section 63-3072,  
25          Idaho Code, no later than one (1) year following the final federal determi-  
26          nation.

27          (7) (a) Claims for refund or credits of tax arising from final federal  
28          adjustments made by the internal revenue service. Except for final  
29          federal adjustments required to be reported for federal purposes under  
30          section 6225(a) (2) of the Internal Revenue Code, a taxpayer may file a  
31          claim for refund or credit of tax arising from federal adjustments made  
32          by the internal revenue service on or before the later of:

33               (i) The expiration of the last day for filing a claim for refund  
34               or credit of Idaho tax pursuant to section 63-3072, Idaho Code, in-  
35               cluding any extensions; or

36               (ii) One (1) year from the date a report of federal adjustments  
37               prescribed in subsection (3) or (4) of this section, as applica-  
38               ble, was due to the state tax commission, including any extensions  
39               pursuant to subsection (8) of this section.

40          (b) The report of federal adjustments shall serve as the means for  
41          the taxpayer to report additional tax due, report a claim for refund  
42          or credit of tax, and make other adjustments, including to its net op-  
43          erating losses, resulting from adjustments to the taxpayer's federal  
44          taxable income.

45          (8) Scope of adjustments and extensions of time.

46               (a) Unless otherwise agreed in writing by the taxpayer and the state tax  
47               commission, any adjustments by the state tax commission or by the tax-  
48               payer made after the expiration of the time period set forth in section  
49               63-3068, Idaho Code, is limited to changes to the taxpayer's tax liabil-  
50               ity arising from federal adjustments.

1 (b) The time periods provided for in section 63-3069A, Idaho Code, may  
2 be extended:

3 (i) Automatically, upon written notice to the state tax commis-  
4 sion, by sixty (60) days for an audited partnership or tiered part-  
5 ner that has ten thousand (10,000) or more direct partners; or

6 (ii) By written agreement between the taxpayer and the state tax  
7 commission pursuant to section 63-3068(m), Idaho Code.

8 (c) Any extension granted under this subsection for filing the report  
9 of federal adjustments extends the last day prescribed by law for as-  
10 ssuming any additional tax arising from the adjustments to federal tax-  
11 able income and the period for filing a claim for refund or credit of  
12 taxes pursuant to section 63-3068, Idaho Code.

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