

IN THE HOUSE OF REPRESENTATIVES

HOUSE BILL NO. 713

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, except for that portion of
16 such income, gain, loss, or deduction apportioned to an exempt entity
17 that is a member of the affected business entity.

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

20 (d) "~~Indirect member~~" means a member that itself holds an interest,
21 through a direct or indirect member that is a partnership or S corpora-
22 tion, in an affected business entity. "Exempt entity" means an entity
23 that is exempt from taxation under this chapter.

24 (d) "Individual" means an individual, a trust, or an estate.

25 (e) "Member" means:

26 (i) A shareholder of an S corporation, except for exempt enti-
27 ties;

28 (ii) A partner in a general partnership, a limited partnership, or
29 a limited liability partnership, except for exempt entities; or

30 (iii) A member of a limited liability company that is treated as a
31 partnership or an S corporation for federal income tax purposes,
32 except for exempt entities.

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

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

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

41 (2) (a) A partnership or an S corporation may elect in the manner set
42 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. An election will also be valid if made by an amended return for the
8 taxable year filed before the original due date of the fifteenth day of
9 the fourth month following the taxable year.

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

11 (i) Each member of the electing entity who is a member at the time
12 the election is filed; or

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

17 (e) An affected business entity is required to pay the tax imposed by
18 section 63-3082, Idaho Code, for each member that is not an Idaho resi-
19 dent.

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

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

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

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

42 (d) Apply any allowable credits earned by the affected business entity,
43 adjusted by the recapture provisions of section 63-3029B, Idaho Code.
44 All credits, including the allowable credits under this section from
45 another affected business entity as adjusted for the recapture provi-
46 sions of section 63-3029B, Idaho Code, shall flow through to the members
47 as otherwise permitted under this chapter. Any unused credits that are
48 allowed by law to be carried forward to succeeding taxable years may be
49 claimed in succeeding taxable years for which the affected business en-
50 tity elects to be subject to tax pursuant to this section. If the af-

1 affected business entity does not make the election under this section in
2 any succeeding taxable year, the unused credits will flow through to the
3 members as otherwise permitted under this chapter.

4 (4) If the amount calculated under subsection (3) (b) of this section
5 results in a net operating loss, such net operating loss may not be passed
6 through to the members of the affected business entity that makes the elec-
7 tion under this section but may be carried forward to succeeding taxable
8 years for which the affected business entity elects to be subject to tax
9 pursuant to this section until fully used. If the affected business entity
10 does not make the election under this section in any succeeding taxable year,
11 the unused net operating loss will flow through to the members as otherwise
12 permitted under this chapter.

13 (5) ~~If an affected business entity is a direct or indirect member of an-~~
14 ~~other affected business entity, the member affected business entity shall,~~
15 ~~when calculating its net income or loss pursuant to subsection (3) (b) of this~~
16 ~~section, subtract its distributive share of income or add its distributive~~
17 ~~share of loss from the affected business entity in which it is a direct or in-~~
18 ~~direct member to the extent that the income or loss was derived from or con-~~
19 ~~connected with sources within this state.~~

20 (6) A nonresident individual who is a member is not required to file an
21 income tax return under section 63-3030, Idaho Code, for any taxable year
22 in which the only source of income derived from or connected with sources
23 within ~~the~~ this state for such member, or the member and the member's spouse
24 if a joint federal income tax return is or shall be filed, is from one (1) or
25 more affected business entities and such affected business entity or enti-
26 ties file and pay the tax due under this section.

27 (7) Each partnership and S corporation shall report to each of its mem-
28 bers, for each taxable year, such member's ~~direct~~ pro rata share of the tax
29 imposed under this section on such partnership or S corporation if it is an
30 affected business entity and ~~its indirect~~ pro rata share of the tax imposed
31 on any affected business entity in which such affected business entity is a
32 ~~direct or indirect member~~. Such pro rata share of the tax shall be calculated
33 by excluding the share of any member that is an exempt entity.

34 (8) (a) Each individual who is a member and is ~~subject to tax under sec-~~
35 ~~tion 63-3024, Idaho Code,~~ not an exempt entity is entitled to a credit
36 against such tax. The credit will be in an amount equal to the indi-
37 vidual's ~~direct and indirect~~ pro rata share of the tax paid under this
38 section by any affected business entity of which the individual is a
39 ~~direct or indirect~~ member. If the amount of the credit allowed pursuant
40 to this paragraph exceeds the individual's tax liability for the tax im-
41 posed under this chapter, the individual will be paid a refund equal to
42 the balance of the unused credit. Such pro rata share of the tax credit
43 shall be calculated by excluding the share of any member that is an ex-
44 empt entity.

45 (b) Each individual who is a member and is ~~subject to the tax under sec-~~
46 ~~tion 63-3024, Idaho Code~~ not an exempt entity, as a resident or a part-
47 year resident of this state, is entitled to a credit against such tax for
48 the individual's ~~direct and indirect~~ pro rata share of taxes paid to an-
49 other state of the United States or the District of Columbia, on income
50 of any partnership or S corporation of which the individual is a member

1 that is derived therefrom, ~~provided the taxes paid to another state of~~
2 ~~the United States or the District of Columbia results from a tax that the~~
3 ~~state tax commission determines is substantially similar to the tax im-~~
4 ~~posed under this section.~~ Any such credit will be calculated in the man-
5 ner prescribed by the state tax commission and shall be consistent with
6 the provisions of section 63-3029, Idaho Code. Such pro rata share of
7 the tax credit shall be calculated by excluding the share of any member
8 that is an exempt entity.

9 (98) Each corporation that is a member and is subject to the tax im-
10 posed under section 63-3025 or 63-3025A, Idaho Code, is entitled to a credit
11 against such tax. The credit will be in an amount equal to the corporation's
12 ~~direct and indirect~~ pro rata share of the tax paid under this section by any
13 affected business entity of which the corporation is a member. Such credit
14 will be applied after all other applicable credits have been applied. Any
15 balance of the credit ~~that is~~ not used in the taxable year during which the
16 corporation reports the net income from such affected business entities will
17 be paid as a refund to the corporation. Such pro rata share of the tax credit
18 shall be calculated by excluding the share of any member that is an exempt en-
19 tity.

20 (9) Each affected business entity that is a member of another affected
21 business entity and elects to be subject to the tax imposed under this sec-
22 tion is entitled to a credit against such tax. The credit will be in an amount
23 equal to the affected business entity's pro rata share of the tax paid under
24 this section by any affected business entity of which the affected business
25 entity is a member. Such credit will be applied after all other applicable
26 credits have been applied. Any balance of the credit not used in the tax-
27 able year during which the affected business entity reports net income will
28 be paid as a refund to the affected business entity. Such pro rata share of
29 the tax credit shall be calculated by excluding the share of any member that
30 is an exempt entity.

31 (10) Each pass-through entity, as defined in section 63-3006C, Idaho
32 Code, that is a member of an affected business entity and does not elect to
33 be subject to the tax imposed under this section is entitled to a credit.
34 The credit will be in an amount equal to the pass-through entity's pro rata
35 share of the tax paid under this section by any affected business entity of
36 which the pass-through entity is a member. Such credit will be applied af-
37 ter all other applicable taxes and credits have been applied. Any balance
38 of the credit not used in the taxable year will be paid as a refund to the
39 pass-through entity.

40 (11) For trusts and estates that distribute their income to their bene-
41 ficiaries to be reported by and taxed to said beneficiaries, the credit pro-
42 vided in subsection (7) (a) of this section shall be apportioned between the
43 trust or estate and the beneficiaries in the same proportion as the income is
44 allocated to and reported by the trust or estate and the beneficiaries.

45 (102) The penalty and interest provisions and the collection and en-
46 forcement procedures provided by sections 63-3038 through 63-3040, 63-3042
47 through 63-3065A, 63-3071, 63-3075, and 63-3078, Idaho Code, shall apply and
48 be available to the state tax commission for enforcement of the provisions of
49 this section and collection of any amounts due under this section. Said sec-
50 tions shall, for this purpose, be considered part of this section, and wher-

1 ever liens or any other proceedings are defined as income tax liens or pro-
2 ceedings, they shall, when applied in enforcement or collection under this
3 section, be described as affected business entity tax liens and proceedings.

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