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## **Idaho Code Section 63-3026B**

### **Affected Business Entities — State And Local Taxation Treatment**

(1) As used in this section:

- (a) "Affected business entity" means any partnership or S corporation that elects to be subject to tax pursuant to this section.
- (b) "Affected business entity income" means, in the case of an electing affected business entity, all items of income, gain, loss, or deduction derived from or connected with Idaho sources, except for that portion of such income, gain, loss, or deduction apportioned to an exempt entity that is a member of the affected business entity.
- (c) "Exempt entity" means an entity that is exempt from taxation under this chapter.
- (d) "Individual" means an individual, a trust, or an estate.
- (e) "Member" means:
  - (i) A shareholder of an S corporation, except for exempt entities;
  - (ii) A partner in a general partnership, a limited partnership, or a limited liability partnership, except for exempt entities; or
  - (iii) A member of a limited liability company that is treated as a partnership or an S corporation for federal income tax purposes, except for exempt entities.
- (f) "Partnership" has the meaning provided in section 63-3006B, Idaho Code. "Partnership" includes a limited liability company that is treated as a partnership for federal income tax purposes as described in section 63-3006A, Idaho Code.
- (g) "S corporation" means a corporation or limited liability company that is treated as an S corporation for federal income tax purposes.
- (h) "Taxable year" means the taxable year of a partnership or an S corporation for federal income tax purposes.

(2)(a) A partnership or an S corporation may elect in the manner set forth in this section to become an affected business entity required to pay the tax under this section in any taxable year. A separate election must be made for each taxable year.

- (b) An election under this section must be made on a form and in the manner as the state tax commission prescribes by rule or instruction.
- (c) An election under this section may be made for any taxable year by filing the election with a timely filed original return for such taxable year. An election will also be valid if made by an amended return for the taxable year filed before the original due date of the fifteenth day of the fourth month following the taxable year.
- (d) An election made under this section must be signed by:
  - (i) Each member of the electing entity who is a member at the time the election is filed; or
  - (ii) Any officer, manager, or member of the electing entity who is authorized under local law or by the entity's organizational documents to make the election and who represents under penalty of perjury that he has such authorization.
- (e) An affected business entity is required to pay the tax imposed by section 63-3082, Idaho Code, for each member that is not an Idaho resident.

(3) Each affected business entity that is a partnership or an S corporation transacting business in this state shall, on or before the fifteenth day of the fourth month following the close of each taxable year, pay a tax in an amount determined as follows:

- (a) Add all of the affected business entity income derived from or connected with sources within this state, as determined under the provisions of this chapter;
- (b) Increase or decrease the sum from paragraph (a) of this subsection according to the modifications permitted or required under this chapter for computing Idaho taxable income, to the extent they are attributable to members subject to tax under this chapter;
- (c) Multiply the result from paragraph (b) of this subsection by the tax rate applicable to corporations provided in section 63-3025, Idaho Code; and
- (d) Apply any allowable credits earned by the affected business entity, adjusted by the recapture provisions of section 63-3029B, Idaho Code. All credits, including the allowable credits under this section from another affected business entity as adjusted for the recapture provisions of section 63-3029B, Idaho Code, shall flow through to the members as otherwise permitted under this chapter. Any unused credits that are allowed by law to be carried forward to succeeding taxable years may be claimed in succeeding taxable years for which the affected business entity elects to be subject to tax pursuant to this section. If the affected business entity does not make the election under this section in any succeeding taxable year, the unused credits will flow through to the members as otherwise permitted under this chapter.

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

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

(6) Each partnership and S corporation shall report to each of its members, for each taxable year, such member's pro rata share of the tax imposed under this section on such partnership or S corporation if it is an affected business entity. Such pro rata share of the tax shall be calculated by excluding the share of any member that is an exempt entity.

(7)(a) Each individual who is a member and is not an exempt entity is entitled to a credit against such tax. The credit will be in an amount equal to the individual's pro rata share of the tax paid under this section by any affected business entity of which the individual is a member. If the amount of the credit allowed pursuant to this paragraph exceeds the individual's tax liability for the tax imposed under this chapter, the individual will be paid a refund equal to the balance of the unused credit. Such pro rata share of the tax credit shall be calculated by excluding the share of any member that is an exempt entity.

(b) Each individual who is a member and is not an exempt entity, as a resident or a part-year resident of this state, is entitled to a credit against such tax for the individual's pro rata share of taxes paid to another state of the United States or the District of Columbia on income of any partnership or S corporation of which the individual is a member that is derived therefrom. Any such credit will be calculated in the manner prescribed by the state tax commission and shall be consistent with the provisions of section 63-3029, Idaho Code. Such pro rata share of the tax credit shall be calculated by excluding the share of any member that is an exempt entity.

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

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

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

(11) For trusts and estates that distribute their income to their beneficiaries to be reported by and taxed to said beneficiaries, the credit provided in subsection (7)(a) of this section shall be apportioned between the trust or estate and the beneficiaries in the same proportion as the income is allocated to and reported by the trust or estate and the beneficiaries.

(12) The penalty and interest provisions and the collection and enforcement procedures provided by sections 63-3038 through 63-3040, 63-3042 through 63-3065A, 63-3071, 63-3075, and 63-3078, Idaho Code, shall apply and be available to the state tax commission for enforcement of the provisions of this section and collection of any amounts due under this section. Said sections shall, for this purpose, be considered part of this section, and wherever liens or any other proceedings are defined as income tax liens or proceedings, they shall, when applied in enforcement or collection under this section, be described as affected business entity tax liens and proceedings.