

IN THE HOUSE OF REPRESENTATIVES

HOUSE BILL NO. 109, As Amended in the Senate

BY REVENUE AND TAXATION COMMITTEE

AN ACT

1 RELATING TO INCOME TAXATION; AMENDING SECTION 63-3022H, IDAHO CODE, TO RE-  
2 VISE THE DEFINITION OF THE TERM "REAL PROPERTY" FOR CAPITAL GAINS PUR-  
3 POSES AND TO PROVIDE THAT PROPERTY THAT HAS BEEN DEPRECIATED IS NOT ELI-  
4 GIBLE TO BE TREATED AS REAL PROPERTY; DECLARING AN EMERGENCY AND PROVID-  
5 ING RETROACTIVE APPLICATION.  
6

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

8 SECTION 1. That Section 63-3022H, Idaho Code, be, and the same is hereby  
9 amended to read as follows:

10 63-3022H. DEDUCTION OF CAPITAL GAINS. (1) If an individual taxpayer  
11 reports capital gain net income in determining taxable income, eighty per-  
12 cent (80%) in taxable year 2001 and sixty percent (60%) in taxable years  
13 thereafter of the capital gain net income from the sale or exchange of quali-  
14 fied property shall be a deduction in determining Idaho taxable income.

15 (2) The deduction provided in this section is limited to the amount of  
16 the capital gain net income from all property included in taxable income.  
17 Gains treated as ordinary income by the Internal Revenue Code do not qualify  
18 for the deduction allowed in this section. The deduction otherwise allow-  
19 able under this section shall be reduced by the amount of any federal capital  
20 gains deduction relating to such property, but not below zero.

21 (3) Property held by an estate, trust, S corporation, partnership, lim-  
22 ited liability company or an individual is "qualified property" under this  
23 section if the property had an Idaho situs at the time of sale and is:

24 (a) Real property held at least twelve (12) months;

25 (b) Tangible personal property used in Idaho for at least twelve (12)  
26 months by a revenue-producing enterprise;

27 (c) Cattle or horses held for breeding, draft, dairy or sporting pur-  
28 poses for at least twenty-four (24) months if more than one-half (1/2)  
29 of the taxpayer's gross income (as defined in section 61(a) of the In-  
30 ternal Revenue Code) for the taxable year is from farming or ranching  
31 operations in Idaho;

32 (d) Breeding livestock other than cattle or horses held at least twelve  
33 (12) months if more than one-half (1/2) of the taxpayer's gross income  
34 (as defined in section 61(a) of the Internal Revenue Code) for the tax-  
35 able year is from farming or ranching operations in Idaho;

36 (e) Timber grown in Idaho and held at least twenty-four (24) months;

37 (f) In determining the period for which property subject to this sec-  
38 tion has been held by a taxpayer, the provisions of section 1223 of the  
39 Internal Revenue Code shall apply, except that the holding period shall  
40 not include the holding period of property given up in an exchange, when  
41 such property would not have constituted qualified property under this  
42 section without regard to meeting the holding period nor shall the hold-

1 ing period include any time period in which the property subject to this  
2 section was held by a corporation other than an S corporation.

3 (4) As used in this section "revenue-producing enterprise" means:

4 (a) The production, assembly, fabrication, manufacture, or processing  
5 of any agricultural, mineral or manufactured product;

6 (b) The storage, warehousing, distribution, or sale at wholesale of any  
7 products of agriculture, mining or manufacturing;

8 (c) The feeding of livestock at a feedlot;

9 (d) The operation of laboratories or other facilities for scientific,  
10 agricultural, animal husbandry, or industrial research, development,  
11 or testing.

12 (5) As used in this section the term "real property" means land and ~~other~~  
13 ~~tangible property permanently upon or affixed to the land~~ includes the fol-  
14 lowing:

15 (a) A "qualified conservation easement," as defined in section  
16 2031(c)(8)(B) of the Internal Revenue Code, conveyed to a "Qualified  
17 Organization" as defined in section 170(h) of the Internal Revenue  
18 Code;

19 (b) Grazing permits or leases issued by the U.S. forest service, the bu-  
20 reau of land management or the Idaho department of lands, if such permit  
21 is transferred simultaneously with the transfer of the "base property";  
22 and

23 (c) Any other property defined in section 1250(c) of the Internal Rev-  
24 enue Code as "section 1250 property" conveyed in perpetuity, the trans-  
25 fer of which would be required to be in writing by section 9-503, Idaho  
26 Code.

27 (6) Property that has been depreciated pursuant to section 1245 of the  
28 Internal Revenue Code is not eligible to be treated as real property for pur-  
29 poses of this deduction.

30 SECTION 2. An emergency existing therefor, which emergency is hereby  
31 declared to exist, this act shall be in full force and effect on and after its  
32 passage and approval, and retroactively to all taxable years beginning on or  
33 after January 1, 2010.