

IN THE HOUSE OF REPRESENTATIVES

HOUSE BILL NO. 714

BY REVENUE AND TAXATION COMMITTEE

AN ACT

1 RELATING TO INCOME TAXES; AMENDING SECTION 63-30220, IDAHO CODE, TO REVISE  
2 PROVISIONS REGARDING TAXATION OF ADJUSTMENTS OF CERTAIN BONUS DEPRECI-  
3 ATION; AMENDING SECTION 2, CHAPTER 211, LAWS OF 2021, TO REVISE THE EF-  
4 FECTIVE DATE; AMENDING CHAPTER 211, LAWS OF 2021, BY THE ADDITION OF A  
5 NEW SECTION 3, CHAPTER 211, LAWS OF 2021, TO PROVIDE FOR APPLICABILITY;  
6 DECLARING AN EMERGENCY AND PROVIDING RETROACTIVE APPLICATION; AND PRO-  
7 VIDING FOR APPLICABILITY.  
8

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

10 SECTION 1. That Section 63-30220, Idaho Code, be, and the same is hereby  
11 amended to read as follows:

12 63-30220. ADJUSTMENT -- PROPERTY ACQUIRED AFTER SEPTEMBER 10, 2001 --  
13 SMALL BUSINESS EXPENSES -- LIMITATIONS ON ASSESSMENTS AND REFUNDS. For tax-  
14 able years commencing on and after January 1, 2001, in computing Idaho tax-  
15 able income:

16 (1) (a) The adjusted basis of depreciable property, depreciation, and  
17 gains and losses from sale, exchange, or other disposition of deprecia-  
18 ble property acquired after September 10, 2001, and before December 31,  
19 2007, shall be computed without regard to the bonus depreciation avail-  
20 able under subsection (k) of section 168 of the Internal Revenue Code  
21 and the adjusted basis of depreciable property, depreciation, and gains  
22 and losses from sale, exchange, or other disposition of depreciable  
23 property acquired after December 31, 2009, shall be computed without  
24 regard to subsection (k) of section 168 of the Internal Revenue Code,  
25 provided that to the extent a taxpayer cannot use the additional de-  
26 preciation claimed under subsection (k) of section 168 of the Internal  
27 Revenue Code in the current year for federal income tax purposes because  
28 of loss limitations imposed by sections 465, 469, 704(d), and 1366(d)  
29 of the Internal Revenue Code, then such additional depreciation shall  
30 not be added back to federal taxable income in order to determine Idaho  
31 taxable income, and in the current year, and the current and subsequent  
32 year bonus depreciation adjustments shall be suspended and the add-back  
33 and subtractions shall be applied as provided in this subsection.

34 (b) In subsequent taxable years, the additional depreciation that was  
35 not added back to federal taxable income in the year it originated as  
36 provided in this subsection shall be added back when a prior loss that  
37 has been suspended under section 465, 469, 704(d), or 1366(d) of the In-  
38 ternal Revenue Code is deducted for federal income tax purposes in the  
39 following manner:

40 (i) Bonus depreciation deducted for federal income tax purposes  
41 shall be added back to Idaho taxable income as the losses suspended  
42 under sections 465, 469, 704(d), and 1366(d) of the Internal Rev-

1 enue Code are utilized, after the utilization of all losses other  
2 than those attributable to bonus depreciation;

3 (ii) The amount of the bonus depreciation add-back shall be the  
4 full amount of the add-back less the cumulative allowable depreci-  
5 ation amounts for Idaho purposes. If, because of the limitations  
6 of sections 465, 469, 704(d), and 1366(d) of the Internal Revenue  
7 Code, there is a partial net add-back, then the net add-back amount  
8 for future periods will be adjusted to reflect the amount that was  
9 actually added back;

10 (iii) After the add-back or net add-back has been fully added back  
11 to Idaho taxable income, the taxpayer may take the remaining de-  
12 ductions over the life of the asset regardless of the limitations  
13 under sections 465, 469, 704(d), and 1366(d) of the Internal Rev-  
14 enue Code;

15 (iv) In the event of a disposition of a pass-through entity's own-  
16 ership interest, adjustments shall be made to the tax basis of the  
17 owner's interest of the pass-through entity to ensure there is no  
18 double deduction of expense or double inclusion of income. The ba-  
19 sis referred to in this subparagraph is the basis to the new owner  
20 in his ownership interest or the basis to the owner who disposed of  
21 this ownership interest, as applicable; and

22 (v) In the event of a disposition of a pass-through entity's as-  
23 sets for which bonus depreciation was elected before the add-back  
24 was fully realized, adjustments shall be made to ensure there is no  
25 double deduction of expense or double inclusion of income.

26 (c) For determining the Idaho adjusted income for part-year residents  
27 or nonresidents:

28 (i) When a loss under section 465, 469, 704(d), or 1366(d) of  
29 the Internal Revenue Code is deducted for federal purposes and is  
30 sourced to Idaho, the additional depreciation that was not added  
31 back in the year it originated as provided in paragraph (a) of this  
32 subsection shall be added back in subsequent years based on the ap-  
33 portionment factor in the year the bonus depreciation originated;  
34 and

35 (ii) When a loss under section 465, 469, 704(d), or 1366(d) of the  
36 Internal Revenue Code is not sourced to Idaho, the add-back of ad-  
37 ditional depreciation shall be made in the current taxable year,  
38 notwithstanding the provisions of paragraph (a) of this subsec-  
39 tion.

40 (2) The loss limitations imposed by sections 465, 469, 704(d), and  
41 1366(d) of the Internal Revenue Code shall be calculated without regard to  
42 depreciation claimed for federal tax purposes pursuant to subsection (k) of  
43 section 168 of the Internal Revenue Code; and.

44 (3) Each partner, shareholder, member, or beneficiary shall include in  
45 Idaho taxable income his share of the adjustments required by this section in  
46 computing Idaho taxable income of any pass-through entity; and.

47 (4) In recognition of the fact that a taxpayer affected by this section  
48 may have a different tax basis in his pass-through entity interest and a dif-  
49 ferent carryover of loss limitations and amount at risk for Idaho tax pur-  
50 poses than for federal tax purposes, each partner, shareholder, member, or

1 beneficiary of any pass-through entity that claims the additional deprecia-  
 2 tion pursuant to subsection (k) of section 168 of the Internal Revenue Code  
 3 shall keep records of the Idaho tax basis of his interest in the pass-through  
 4 entity, the amount at risk, and the balance of his carryover of Idaho loss  
 5 limitations in order to confirm that the partner, shareholder, member, or  
 6 beneficiary, or any successor of his interest by purchase or other means,  
 7 does not receive directly or indirectly any Idaho income tax benefit from the  
 8 additional depreciation available under subsection (k) of section 168 of the  
 9 Internal Revenue Code.

10 (5) Notwithstanding the provisions of sections 63-3068 and 63-3072,  
 11 Idaho Code, the period of limitations for issuing a notice of deficiency de-  
 12 termination or filing a claim for refund for any year for which an adjustment  
 13 is required by this section shall not expire before three (3) years from the  
 14 later of: (a) the due date of the return for the last taxable year an adjust-  
 15 ment was required by this section; or (b) the date the return was filed for  
 16 the last taxable year an adjustment was required by this section. Upon the  
 17 expiration of the period of limitations as provided in subsections (a) and  
 18 (m) of section 63-3068, Idaho Code, and subsections (b) and (h) of section  
 19 63-3072, Idaho Code, only those specific items of basis, deductions, gains,  
 20 or losses that are computed without regard to subsection (k) of section 168  
 21 of the Internal Revenue Code, as required by this section, shall be subject  
 22 to adjustment, as well as the effect of such adjustments on Idaho credits,  
 23 net operating loss deductions, and capital loss carryovers.

24 SECTION 2. That Section 2, Chapter 211, Laws of 2021, be, and the same  
 25 is hereby amended to read as follows:

26 SECTION 2. An emergency existing therefor, which emergency is  
 27 hereby declared to exist, this act shall be in full force and effect  
 28 on and after its passage and approval, and retroactively to January  
 29 1, ~~2021~~ 2016.

30 SECTION 3. That Chapter 211, Laws of 2021, be, and the same is hereby  
 31 amended by the addition thereto of a NEW SECTION, to be known and designated  
 32 as Section 3, Chapter 211, Laws of 2021, and to read as follows:

33 SECTION 3. APPLICATION. The provisions of this act shall apply  
 34 retroactively to January 1, 2016, for any taxpayer who timely filed  
 35 an original tax return in a manner consistent with this act. For any  
 36 other taxpayer, the provisions of this act apply retroactively to  
 37 January 1, 2021.

38 SECTION 4. An emergency existing therefor, which emergency is hereby  
 39 declared to exist, this act shall be in full force and effect on and after its  
 40 passage and approval, and retroactively to January 1, 2016.

41 SECTION 5. APPLICATION. The provisions of this act shall apply retroac-  
 42 tively to January 1, 2016, for any taxpayer who timely filed an original tax  
 43 return in a manner consistent with this act. For any other taxpayer, the pro-  
 44 visions of this act apply retroactively to January 1, 2021.