



MULTISTATE INCOME/FRANCHISE TAX

Idaho adopts single sales factor and market sourcing apportionment

Tax Alert

Overview

On March 16, 2022, Idaho Governor Brad Little signed into law [House Bill 563](#) (H.B. 563), which enacts a single sales factor apportionment formula with market-based sourcing for sales other than sales of tangible personal property. The legislation also makes various other changes to Idaho Code § 63-3027, which provides the rules for calculating the taxable income of multistate corporations. The law takes effect for tax years beginning on or after January 1, 2022.

This Tax Alert summarizes some of the relevant provisions of H.B. 563.

Idaho H.B. 563

H.B. 563 makes the following amendments to Idaho Code § 63-3027:

- Changes the Idaho apportionment factor from a three-factor apportionment formula with double-weighted sales to a single sales factor formula.
- Adopts market sourcing as the method for calculating the Idaho sales factor for sales other than sales of tangible personal property, replacing Idaho's current greater cost of performance method for sourcing such sales.
- Allows certain taxpayers to elect to use an equally weighted three-factor formula.
 - Eligible taxpayers may include electrical corporations; telephone corporations; communications companies; or taxpayers subject to a special industry regulation under Idaho Code § 63-3027(18), which is a new subsection added by H.B. 563 authorizing the promulgation of administrative rules for using alternative apportionment methods (either as required by the state, by petitioning the state, or pursuant to special

industry rules issued by the state).

- Communications companies may also elect to use a greater cost of performance rule for sourcing sales other than sales of tangible personal property.
- For those taxpayers that elect to use a three-factor formula, the payroll and property factor rules remain unchanged.
- Clarifies the rules for taxpayers subject to alternative apportionment, including the following:
 - Generally, parties seeking alternative apportionment must show by a preponderance of the evidence that: (1) the allocation and apportionment provisions of Idaho Code § 63-3027 do not fairly represent the taxpayer’s business activity in Idaho and (2) the alternative apportionment is reasonable.
 - If the Idaho State Tax Commission (“Commission”) requires alternative apportionment, the Commission cannot impose civil or criminal penalties on the tax due that is attributable to the taxpayer’s “reasonable reliance solely on the allocation and apportionment provisions of [Idaho § 63-3027]”.
- Modifies or adds defined terms as follows:
 - Changes the term “business income” to “apportionable income” and revises the definition to include income arising from tangible and intangible property if the “acquisition, management, employment, development, or disposition of the property constitutes integral or necessary parts of the taxpayer’s trade or business operations.”
 - Changes the term “nonbusiness income” to “nonapportionable income,” which is now defined as all income other than apportionable income.
 - Adds definitions for the following terms: “broadcast customer”; “broadcaster”; “communications company”; and “film programming”.
 - Revises the term “sales” (now alternatively referred to as “receipts” under the legislation) to mean all gross receipts of the taxpayer not allocated under Idaho Code § 63-3027 “and that are received from transactions and activities in the regular course of the taxpayer’s trade or business or otherwise required to be included as apportionable income.”
- Clarifies that Idaho Code § 63-3027 controls if any of its provisions are inconsistent with Idaho Code § 63-3701, which contains the state’s enacted “Multistate Tax Compact” provisions.

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