

D R A F T

SUMMARY

Reduces amount of income eligible for elective reduced personal income tax rate allowed for certain pass-through income. Excludes income attributable to certain types of trade or business from eligibility for reduced rate.

Applies to tax years beginning on or after January 1, 2021.

Takes effect on 91st day following adjournment sine die.

A BILL FOR AN ACT

1
2 Relating to taxation; creating new provisions; amending ORS 316.043; and
3 prescribing an effective date.

4 **Be It Enacted by the People of the State of Oregon:**

5 **SECTION 1.** ORS 316.043 is amended to read:

6 316.043. (1) As used in this section:

7 (a) “Material participation” has the meaning given that term in section
8 469 of the Internal Revenue Code.

9 (b) “Nonpassive income” means income other than income from passive
10 activity as determined under section 469 of the Internal Revenue Code.

11 “Nonpassive income” does not include wages, interest, dividends or capital
12 gains.

13 (c) “Nonpassive loss” means loss other than loss from passive activity as
14 determined under section 469 of the Internal Revenue Code.

15 (d)(A) “Qualifying income” means a taxpayer’s net income that meets the
16 conditions of subsection (6) of this section, as reported on the taxpayer’s
17 return, and that is computed by taking the sum of the taxpayer’s:

18 [(A)] (i) Nonpassive income after reduction for nonpassive losses; and

19 [(B)] (ii) Business income or loss as a sole proprietor.

1 **(B) “Qualifying income” does not include income that is attrib-**
2 **able to:**

3 **(i) A specified service trade or business, as defined in section**
4 **199A(d)(2) of the Internal Revenue Code; or**

5 **(ii) The trade or business of performing services as an employee, for**
6 **the purposes of section 199A(d)(2) of the Internal Revenue Code.**

7 (2) If a taxpayer that meets the conditions of subsection (6) of this section
8 has nonpassive income attributable to any partnership or S corporation after
9 reduction for nonpassive losses or does business as a sole proprietorship, that
10 portion of the taxpayer’s income that is qualifying income shall be taxed at:

11 (a) The rate applicable under ORS 316.037; or

12 (b) At the election of the taxpayer, a rate of:

13 (A) Seven percent of the first \$250,000 of taxable income, or fraction
14 thereof;

15 (B) Seven and two-tenths percent of taxable income exceeding \$250,000 but
16 not exceeding [~~\$500,000;~~] **\$415,000; and**

17 [~~(C) Seven and six-tenths percent of taxable income exceeding \$500,000 but~~
18 ~~not exceeding \$1 million;~~]

19 [~~(D) Eight percent of taxable income exceeding \$1 million but not exceeding~~
20 ~~\$2.5 million;~~]

21 [~~(E) Nine percent of taxable income exceeding \$2.5 million but not exceeding~~
22 ~~\$5 million; and]~~

23 [~~(F)~~] **(C) Nine and nine-tenths percent of taxable income exceeding [~~\$5~~**
24 **million] \$415,000.**

25 (3) The reduced rates allowed under subsection (2)(b) of this section may
26 be adjusted as provided in ORS 316.044.

27 (4) A taxpayer shall use the subtractions, deductions or additions other-
28 wise allowed under this chapter in the calculation of income that is taxed
29 at the rates otherwise applicable under ORS 316.037. The only addition or
30 subtraction allowed in the calculation of qualifying income for which the
31 taxpayer uses the reduced rates allowed under subsection (2)(b) of this sec-

1 tion shall be any depreciation adjustment directly related to the partnership,
2 S corporation or sole proprietorship.

3 (5) The election under subsection (2)(b) of this section shall be irrevocable
4 and shall be made on the taxpayer's original return. If the taxpayer uses the
5 reduced rates allowed under subsection (2)(b) of this section, the calculation
6 of income shall be substantiated on a form prescribed by the Department of
7 Revenue and filed with the taxpayer's tax return for the tax year or at such
8 other time and manner as the department may prescribe by rule. A taxpayer
9 who uses the reduced rates available under subsection (2)(b) of this section
10 may not join in the filing of a composite return under ORS 314.778.

11 (6) The rates listed in subsection (2)(b) of this section apply to income
12 attributable to a partnership, S corporation or sole proprietorship only if:

13 (a) The taxpayer materially participates in the trade or business;

14 (b) The partnership, S corporation or sole proprietorship employs at least
15 one person who is not an owner, member or limited partner of the partner-
16 ship or S corporation or who is not the sole proprietor; and

17 (c) At least 1,200 aggregate hours of work in Oregon are performed, by
18 the close of the tax year for which the reduced rate is allowed, by employees
19 who meet the requirements of paragraph (b) of this subsection and who are
20 employed by the partnership, S corporation or sole proprietorship. In deter-
21 mining whether this requirement is met, only hours worked in a week in
22 which a worker works at least 30 hours may be considered.

23 (7)(a) A nonresident may apply the reduced rates allowed under sub-
24 section (2)(b) of this section only to income earned in Oregon.

25 (b) A part-year resident shall calculate the tax due using the reduced
26 rates allowed under subsection (2)(b) of this section by first applying those
27 rates to the taxpayer's qualifying income, and then multiplying that amount
28 by the ratio of the taxpayer's income in Oregon divided by income from all
29 sources.

30 **SECTION 2. The amendments to ORS 316.043 by section 1 of this**
31 **2021 Act apply to tax years beginning on or after January 1, 2021.**

1 **SECTION 3. This 2021 Act takes effect on the 91st day after the date**
2 **on which the 2021 regular session of the Eighty-first Legislative As-**
3 **sembly adjourns sine die.**

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