

House Bill 3373

Sponsored by Representative SCOTT

SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure **as introduced**.

Reduces rate of tax on capital gains of personal income taxpayers and establishes graduated capital gains tax rates based on amounts of capital gains realized by taxpayers. Reduces rate of capital gains tax on corporate income and excise taxpayers.

Applies to tax years beginning on or after January 1, 2008.

A BILL FOR AN ACT

Relating to taxation on capital gains; creating new provisions; amending ORS 316.037, 316.045, 317.061 and 318.020; and repealing ORS 317.063.

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

SECTION 1. ORS 316.037 is amended to read:

316.037. (1)(a) A tax is imposed for each taxable year on the entire taxable income of every resident of this state. The amount of the tax shall be determined in accordance with the following table:

If taxable income is:	The tax is:
Not over \$2,000	5% of taxable income
Over \$2,000 but not over \$5,000	\$100 plus 7% of the excess over \$2,000
Over \$5,000	\$310 plus 9% of the excess over \$5,000

(b) For tax years beginning in each calendar year, the Department of Revenue shall adopt a table that shall apply in lieu of the table contained in paragraph (a) of this subsection, as follows:

(A) The minimum and maximum dollar amounts for each rate bracket for which a tax is imposed shall be increased by the cost-of-living adjustment for the calendar year.

(B) The rate applicable to any rate bracket as adjusted under subparagraph (A) of this para-

NOTE: Matter in **boldfaced** type in an amended section is new; matter [*italic and bracketed*] is existing law to be omitted. New sections are in **boldfaced** type.

1 graph shall not be changed.

2 (C) The amounts setting forth the tax, to the extent necessary to reflect the adjustments in the
3 rate brackets, shall be adjusted.

4 (c) For purposes of paragraph (b) of this subsection, the cost-of-living adjustment for any calen-
5 dar year is the percentage (if any) by which the monthly averaged U.S. City Average Consumer
6 Price Index for the 12 consecutive months ending August 31 of the prior calendar year exceeds the
7 monthly averaged index for the second quarter of the calendar year 1992.

8 (d) As used in this subsection, "U.S. City Average Consumer Price Index" means the U.S. City
9 Average Consumer Price Index for All Urban Consumers (All Items) as published by the Bureau of
10 Labor Statistics of the United States Department of Labor.

11 (e) If any increase determined under paragraph (b) of this subsection is not a multiple of \$50,
12 the increase shall be rounded to the next lower multiple of \$50.

13 (2) A tax is imposed for each taxable year upon the entire taxable income of every part-year
14 resident of this state. The amount of the tax shall be computed under subsection (1) of this section
15 as if the part-year resident were a full-year resident and shall be multiplied by the ratio provided
16 under ORS 316.117 to determine the tax on income derived from sources within this state.

17 (3) A tax is imposed for each taxable year on the taxable income of every full-year nonresident
18 that is derived from sources within this state. The amount of the tax shall be determined in ac-
19 cordance with the table set forth in subsection (1) of this section.

20 (4) **Notwithstanding subsections (1) to (3) of this section, any gain that is treated as net**
21 **capital gain for federal tax purposes and that is included in taxable income in this state shall**
22 **be taxed at the lesser of the amount determined under subsections (1) to (3) of this section**
23 **or the amount determined in accordance with the following table:**

If Oregon capital	The tax is:
gains are:	
Not over \$10,000	4.5%
Over \$10,000 but not	
over \$25,000	\$450 plus 5%
	of the excess
	over \$10,000
Over \$25,000 but not	
over \$50,000	\$1,200 plus 5.5%
	of the excess
	over \$25,000
Over \$50,000 but not	
over \$100,000	\$2,575 plus 6%
	of the excess
	over \$50,000

1 **Over \$100,000** **\$5,575 plus 7%**
2 **of the excess**
3 **over \$100,000**

5
6 **SECTION 2.** ORS 316.045 is amended to read:

7 316.045. (1) As used in this section:

8 (a) "Farming" means:

9 (A) Raising, harvesting and selling crops;

10 (B) Feeding, breeding, managing or selling livestock, poultry, fur-bearing animals or honeybees
11 or the produce thereof;

12 (C) Dairying and selling dairy products;

13 (D) Stabling or training equines, including but not limited to providing riding lessons, training
14 clinics and schooling shows;

15 (E) Propagating, cultivating, maintaining or harvesting aquatic species and bird and animal
16 species to the extent allowed by the rules adopted by the State Fish and Wildlife Commission;

17 (F) On-site constructing and maintaining equipment and facilities used for the activities de-
18 scribed in this subsection;

19 (G) Preparing, storing or disposing of, by marketing or otherwise, the products or by-products
20 raised for human or animal use on land employed in activities described in this subsection; or

21 (H) Any other agricultural or horticultural activity or animal husbandry, or any combination
22 of these activities, except that "farming" does not include growing and harvesting trees of a
23 marketable species other than growing and harvesting cultured Christmas trees or certain hardwood
24 timber described in ORS 321.267 (3) or 321.824 (3).

25 (b) "Section 1231 gain" has the meaning given that term in section 1231 of the Internal Revenue
26 Code.

27 (2) Notwithstanding ORS 316.037, taxable income that consists of net long-term capital gain shall
28 be subject to tax under this chapter at **the lesser of the rate applicable under ORS 316.037 or**
29 a rate of five percent if all of the following conditions apply:

30 (a) The gain is:

31 (A) Derived from the sale or exchange of capital assets consisting of ownership interests in a
32 corporation, partnership or other entity in which, prior to the sale or exchange, the taxpayer owned
33 at least a 10 percent ownership interest; or

34 (B) Section 1231 gain.

35 (b) The property that was sold or exchanged consisted of:

36 (A) Ownership interests in a corporation, partnership or other entity that is engaged in the
37 trade or business of farming; or

38 (B) Property that is predominantly used in the trade or business of farming.

39 (c) The sale or exchange is to a person who is not related to the taxpayer under section 267 of
40 the Internal Revenue Code.

41 (d) The sale or exchange constitutes a substantially complete termination of all of the taxpayer's
42 ownership interests in a trade or business that is engaged in farming or a substantially complete
43 termination of all of the taxpayer's ownership interests in property that is employed in the trade
44 or business of farming. Ownership of a farm dwelling or farm homesite does not constitute owner-
45 ship of property employed in the trade or business of farming.

1 (3) If the taxpayer has net long-term capital gain derived in part from the sale or exchange of
 2 property described in subsection (2)(b) of this section and in part from the sale or exchange of all
 3 other property, the net long-term capital gain that is subject to tax under this section shall be de-
 4 termined as follows:

5 (a) Compute the net long-term capital gain derived from all property described in subsection
 6 (2)(b) of this section that was sold or exchanged during the tax year.

7 (b) Compute the net capital gain or loss from the sale or exchange of all other property during
 8 the tax year.

9 (c) If the amount determined under paragraph (b) of this subsection is a net capital gain, the
 10 gain that is subject to tax under subsection (2) of this section shall be the amount determined under
 11 paragraph (a) of this subsection.

12 (d) If the amount determined under paragraph (b) of this subsection is a net capital loss, the gain
 13 that is subject to tax under subsection (2) of this section shall be the amount determined under
 14 paragraph (a) of this subsection minus the amount determined under paragraph (b) of this subsection.

15 **SECTION 3. The amendments to ORS 316.037 and 316.045 by sections 1 and 2 of this 2007**
 16 **Act apply to tax years beginning on or after January 1, 2008.**

17 **SECTION 4.** ORS 317.061 is amended to read:

18 317.061. (1) The rate of the tax imposed by and computed under this chapter is six and six-tenths
 19 percent.

20 (2) **Notwithstanding subsection (1) of this section, any gain that is treated as net capital**
 21 **gain for federal tax purposes and that is included in taxable income in this state shall be**
 22 **taxed at a rate of five percent.**

23 **SECTION 5. The amendments to ORS 317.061 by section 4 of this 2007 Act apply to tax**
 24 **years beginning on or after January 1, 2008.**

25 **SECTION 6. ORS 317.063 does not apply to tax years beginning on or after January 1,**
 26 **2008.**

27 **SECTION 7. ORS 317.063 is repealed on January 2, 2010.**

28 **SECTION 8. The repeal of ORS 317.063 by section 7 of this 2007 Act does not affect the**
 29 **taxation of net long-term capital gain under ORS 317.063 for a tax year beginning before**
 30 **January 1, 2008.**

31 **SECTION 9.** ORS 318.020 is amended to read:

32 318.020. (1) There hereby is imposed upon every corporation for each taxable year a tax at the
 33 rate provided in ORS 317.061 upon its Oregon taxable income derived from sources within this state,
 34 other than income for which the corporation is subject to the tax imposed by ORS chapter 317 ac-
 35 cording to or measured by its Oregon taxable income.

36 (2) Income from sources within this state includes income from tangible or intangible property
 37 located or having a situs in this state and income from any activities carried on in this state, re-
 38 gardless of whether carried on in intrastate, interstate or foreign commerce.

39 *[(3) Income that constitutes net long-term capital gain described in ORS 317.063 shall be taxed at*
 40 *the rate imposed under ORS 317.063.]*

41 **SECTION 10. The amendments to ORS 318.020 by section 9 of this 2007 Act apply to tax**
 42 **years beginning on or after January 1, 2008.**