

House Bill 3346

Sponsored by Representative BERGER; Representatives BRUUN, CAMERON, ESQUIVEL, GARRARD, GILLIAM, HANNA, JENSON, KRIEGER, MAURER, OLSON, SPRENGER, WEIDNER, WHISNANT

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**.

Replaces personal exemption credit for dependent with income tax subtraction of \$1,000 per dependent. Reduces personal income tax rates for certain taxpayers by modifying income tax brackets. Applies to tax years beginning on or after January 1, 2011.

Allows taxpayer to subtract from federal taxable income percentage of net capital gain for purposes of calculating Oregon taxable income. Phases in subtraction over specified time periods. Applies to tax years beginning on or after January 1, 2011, for personal income taxpayers and January 1, 2012, for corporate income and excise taxpayers.

Raises threshold for filing inheritance tax return to \$2 million for estates of decedents who die on or after January 1, 2010.

Takes effect on 91st day following adjournment sine die.

A BILL FOR AN ACT

1
2 Relating to taxation; creating new provisions; and amending ORS 118.160, 316.037, 316.045, 316.085,
3 316.695 and 317.063; and prescribing an effective date.

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

5 **SECTION 1.** ORS 316.085 is amended to read:

6 316.085. *[(1)(a)]* (1) There shall be allowed a personal exemption credit against taxes otherwise
7 due under this chapter. The credit shall equal [*\$90 multiplied by*] the number of personal exemptions
8 allowed under section 151 of the Internal Revenue Code **less the number of dependents claimed**
9 **on the taxpayer's federal tax return, multiplied by \$90.**

10 *[(b) In the case of an individual with respect to whom a credit under paragraph (a) of this sub-*
11 *section is allowable to another taxpayer for a taxable year beginning in the calendar year in which the*
12 *individual's taxable year begins, the credit amount applicable to such individual for such individual's*
13 *taxable year is zero.]*

14 (2)(a) A nonresident shall be allowed the credit provided under subsection (1) of this section
15 computed in the same manner and subject to the same limitations as the credit allowed to a resident
16 of this state. However, the credit shall be prorated using the proportion provided in ORS 316.117.

17 (b) If a change in the taxable year of a taxpayer occurs as described in ORS 314.085, or if the
18 Department of Revenue terminates the taxpayer's taxable year under ORS 314.440, the credit al-
19 lowed by this section shall be prorated or computed in a manner consistent with ORS 314.085.

20 (c) If a change in the status of a taxpayer from resident to nonresident or from nonresident to
21 resident occurs, the credit allowed by this section shall be determined in a manner consistent with
22 ORS 316.117.

23 (3) The Department of Revenue shall recompute the dollar amount of the personal exemption
24 credit allowed for state personal income tax purposes. The computation shall be as follows:

25 (a) Divide the monthly averaged U.S. City Average Consumer Price Index for the 12 consecutive
26 months ending August 31 of the prior calendar year by the monthly averaged index for the first six

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 months of 1986.

2 (b) Recompute the dollar amount of the personal exemption credit by multiplying \$90 by the
 3 appropriate indexing factor determined as provided in paragraph (a) of this subsection. Round off the
 4 amount obtained under this paragraph to the nearest \$1.

5 (4) As used in this section, "U.S. City Average Consumer Price Index" means the U.S. City Av-
 6 erage Consumer Price Index for All Urban Consumers (All Items) as published by the Bureau of
 7 Labor Statistics of the United States Department of Labor.

8 (5) Notwithstanding subsections (1) to (3) of this section, if a taxpayer's federal adjusted gross
 9 income for the tax year exceeds the threshold amount, the exemption amount shall be the greater
 10 of:

11 (a) Thirty-three percent of the amount computed in subsection (3) of this section; or

12 (b) The amount computed in subsection (3) of this section reduced by:

13 (A) Two percentage points for each \$2,500 (or fraction thereof) by which the taxpayer's federal
 14 adjusted gross income exceeds the threshold amount; or

15 (B) Two percentage points for each \$1,250 (or fraction thereof) by which the taxpayer's federal
 16 adjusted gross income exceeds the threshold amount, if the taxpayer is married but filing separately.

17 (6) As used in this section, "threshold amount" means:

18 (a) \$234,600 in the case of a joint return or a surviving spouse.

19 (b) \$195,500 in the case of a head of a household.

20 (c) \$156,400 in the case of an individual who is not a married individual and is not a surviving
 21 spouse.

22 (d) \$117,300 in the case of a married individual filing a separate return.

23 (7) The Department of Revenue shall adjust the threshold amounts in subsection (6) of this sec-
 24 tion according to the cost-of-living adjustment for the calendar year. The department shall annually
 25 recompute the threshold amounts for the current tax year by multiplying each dollar amount by the
 26 percentage (if any) by which the monthly averaged U.S. City Average Consumer Price Index for the
 27 12 consecutive months ending August 31 of the prior calendar year exceeds the monthly averaged
 28 U.S. City Average Consumer Price Index for the 12 consecutive months ending August 31, 2006.

29 (8) If a threshold amount computed under subsections (6) and (7) of this section is not a multiple
 30 of \$50, the amount shall be rounded to the next lower multiple of \$50.

31 **SECTION 2.** ORS 316.695 is amended to read:

32 316.695. (1) In addition to the modifications to federal taxable income contained in this chapter,
 33 there shall be added to or subtracted from federal taxable income:

34 (a) If, in computing federal income tax for a taxable year, the taxpayer deducted itemized de-
 35 ductions, as defined in section 63(d) of the Internal Revenue Code, the taxpayer shall add the amount
 36 of itemized deductions deducted (the itemized deductions less an amount, if any, by which the item-
 37 ized deductions are reduced under section 68 of the Internal Revenue Code).

38 (b) If, in computing federal income tax for a taxable year, the taxpayer deducted the standard
 39 deduction, as defined in section 63(c) of the Internal Revenue Code, the taxpayer shall add the
 40 amount of the standard deduction deducted.

41 (c)(A) From federal taxable income there shall be subtracted the larger of (i) the taxpayer's
 42 itemized deductions or (ii) a standard deduction. Except as provided in subsection (8) of this section,
 43 for purposes of this subparagraph, "standard deduction" means the sum of the basic standard de-
 44 duction and the additional standard deduction.

45 (B) For purposes of subparagraph (A) of this paragraph, the basic standard deduction is:

- 1 (i) \$3,280, in the case of joint return filers or a surviving spouse;
- 2 (ii) \$1,640, in the case of an individual who is not a married individual and is not a surviving
- 3 spouse;
- 4 (iii) \$1,640, in the case of a married individual who files a separate return; or
- 5 (iv) \$2,640, in the case of a head of household.
- 6 (C)(i) For purposes of subparagraph (A) of this paragraph for tax years beginning on or after
- 7 January 1, 2003, the Department of Revenue shall annually recompute the basic standard deduction
- 8 for each category of return filer listed under subparagraph (B) of this paragraph. The basic standard
- 9 deduction shall be computed by dividing the monthly averaged U.S. City Average Consumer Price
- 10 Index for the 12 consecutive months ending August 31 of the prior calendar year by the average
- 11 U.S. City Average Consumer Price Index for the second quarter of 2002, then multiplying that quo-
- 12 tient by the amount listed under subparagraph (B) of this paragraph for each category of return
- 13 filer.
- 14 (ii) If any change in the maximum household income determined under this subparagraph is not
- 15 a multiple of \$5, the increase shall be rounded to the next lower multiple of \$5.
- 16 (iii) As used in this subparagraph, "U.S. City Average Consumer Price Index" means the U.S.
- 17 City Average Consumer Price Index for All Urban Consumers (All Items) as published by the Bureau
- 18 of Labor Statistics of the United States Department of Labor.
- 19 (D) For purposes of subparagraph (A) of this paragraph, the additional standard deduction is the
- 20 sum of each additional amount to which the taxpayer is entitled under subsection (7) of this section.
- 21 (E) As used in subparagraph (B) of this paragraph, "surviving spouse" and "head of household"
- 22 have the meaning given those terms in section 2 of the Internal Revenue Code.
- 23 (F) In the case of the following, the standard deduction referred to in subparagraph (A) of this
- 24 paragraph shall be zero:
- 25 (i) A husband or wife filing a separate return where the other spouse has claimed itemized de-
- 26 ductions under subparagraph (A) of this paragraph;
- 27 (ii) A nonresident alien individual;
- 28 (iii) An individual making a return for a period of less than 12 months on account of a change
- 29 in his or her annual accounting period;
- 30 (iv) An estate or trust;
- 31 (v) A common trust fund; or
- 32 (vi) A partnership.
- 33 (d) For the purposes of paragraph (c)(A) of this subsection, the taxpayer's itemized deductions
- 34 are the sum of:
- 35 (A) The taxpayer's itemized deductions as defined in section 63(d) of the Internal Revenue Code
- 36 (reduced, if applicable, as described under section 68 of the Internal Revenue Code) minus the de-
- 37 duction for Oregon income tax (reduced, if applicable, by the proportion that the reduction in federal
- 38 itemized deductions resulting from section 68 of the Internal Revenue Code bears to the amount of
- 39 federal itemized deductions as defined for purposes of section 68 of the Internal Revenue Code); and
- 40 (B) The amount that may be taken into account under section 213(a) of the Internal Revenue
- 41 Code, not to exceed seven and one-half percent of the federal adjusted gross income of the taxpayer,
- 42 if the taxpayer has attained the following age before the close of the taxable year, or, in the case
- 43 of a joint return, if either taxpayer has attained the following age before the close of the taxable
- 44 year:
- 45 (i) For taxable years beginning on or after January 1, 1991, and before January 1, 1993, a tax-

1 payer must attain 58 years of age before the close of the taxable year.

2 (ii) For taxable years beginning on or after January 1, 1993, and before January 1, 1995, a tax-
3 payer must attain 59 years of age before the close of the taxable year.

4 (iii) For taxable years beginning on or after January 1, 1995, and before January 1, 1997, a
5 taxpayer must attain 60 years of age before the close of the taxable year.

6 (iv) For taxable years beginning on or after January 1, 1997, and before January 1, 1999, a tax-
7 payer must attain 61 years of age before the close of the taxable year.

8 (v) For taxable years beginning on or after January 1, 1999, a taxpayer must attain 62 years of
9 age before the close of the taxable year.

10 (2)(a) There shall be subtracted from federal taxable income any portion of the distribution of
11 a pension, profit-sharing, stock bonus or other retirement plan, representing that portion of contri-
12 butions which were taxed by the State of Oregon but not taxed by the federal government under
13 laws in effect for tax years beginning prior to January 1, 1969, or for any subsequent year in which
14 the amount that was contributed to the plan under the Internal Revenue Code was greater than the
15 amount allowed under this chapter.

16 (b) Interest or other earnings on any excess contributions of a pension, profit-sharing, stock
17 bonus or other retirement plan not permitted to be deducted under paragraph (a) of this subsection
18 shall not be added to federal taxable income in the year earned by the plan and shall not be sub-
19 tracted from federal taxable income in the year received by the taxpayer.

20 (3)(a) Except as provided in paragraph (b) of this subsection and subsection (4) of this section,
21 there shall be added to federal taxable income the amount of any federal income taxes in excess of
22 \$5,500, accrued by the taxpayer during the taxable year as described in ORS 316.685, less the
23 amount of any refund of federal taxes previously accrued for which a tax benefit was received.

24 (b) In the case of a husband and wife filing separate tax returns, the amount added shall be in
25 the amount of any federal income taxes in excess of \$2,750, less the amount of any refund of federal
26 taxes previously accrued for which a tax benefit was received.

27 (c)(A) For a calendar year beginning on or after January 1, 2008, the Department of Revenue
28 shall make a cost-of-living adjustment to the federal income tax threshold amount described in par-
29 agraphs (a) and (b) of this subsection.

30 (B) The cost-of-living adjustment for a calendar year is the percentage by which the monthly
31 averaged U.S. City Average Consumer Price Index for the 12 consecutive months ending August 31
32 of the prior calendar year exceeds the monthly averaged index for the period beginning September
33 1, 2005, and ending August 31, 2006.

34 (C) As used in this paragraph, "U.S. City Average Consumer Price Index" means the U.S. City
35 Average Consumer Price Index for All Urban Consumers (All Items) as published by the Bureau of
36 Labor Statistics of the United States Department of Labor.

37 (D) If any adjustment determined under subparagraph (B) of this paragraph is not a multiple of
38 \$50, the adjustment shall be rounded to the next lower multiple of \$50.

39 (E) The adjustment shall apply to all tax years beginning in the calendar year for which the
40 adjustment is made.

41 (4)(a) In addition to the adjustments required by ORS 316.130, a full-year nonresident individual
42 shall add to taxable income a proportion of any accrued federal income taxes as computed under
43 ORS 316.685 in excess of \$5,500 in the proportion provided in ORS 316.117.

44 (b) In the case of a husband and wife filing separate tax returns, the amount added under this
45 subsection shall be computed in a manner consistent with the computation of the amount to be

1 added in the case of a husband and wife filing separate returns under subsection (3) of this section.
2 The method of computation shall be determined by the Department of Revenue by rule.

3 (5) Subsections (3)(b) and (4)(b) of this section shall not apply to married individuals living apart
4 as defined in section 7703(b) of the Internal Revenue Code.

5 (6)(a) For tax years beginning on or after January 1, 1981, and prior to January 1, 1983, income
6 or loss taken into account in determining federal taxable income by a shareholder of an S corpo-
7 ration pursuant to sections 1373 to 1375 of the Internal Revenue Code shall be adjusted for purposes
8 of determining Oregon taxable income, to the extent that as income or loss of the S corporation,
9 they were required to be adjusted under the provisions of ORS chapter 317.

10 (b) For tax years beginning on or after January 1, 1983, items of income, loss or deduction taken
11 into account in determining federal taxable income by a shareholder of an S corporation pursuant
12 to sections 1366 to 1368 of the Internal Revenue Code shall be adjusted for purposes of determining
13 Oregon taxable income, to the extent that as items of income, loss or deduction of the shareholder
14 the items are required to be adjusted under the provisions of this chapter.

15 (c) The tax years referred to in paragraphs (a) and (b) of this subsection are those of the S
16 corporation.

17 (d) As used in paragraph (a) of this subsection, an S corporation refers to an electing small
18 business corporation.

19 (7)(a) The taxpayer shall be entitled to an additional amount, as referred to in subsection
20 (1)(c)(A) and (D) of this section, of \$1,000:

21 (A) For [*himself or herself*] **the taxpayer** if [*he or she*] **the taxpayer** has attained age 65 before
22 the close of [*his or her*] **the taxpayer's** taxable year; [*and*]

23 (B) For the spouse of the taxpayer if the spouse has attained age 65 before the close of the
24 taxable year and an additional exemption is allowable to the taxpayer for such spouse for federal
25 income tax purposes under section 151(b) of the Internal Revenue Code[.]; **and**

26 **(C) For each dependent of the taxpayer as defined in section 152 of the Internal Revenue**
27 **Code.**

28 (b) The taxpayer shall be entitled to an additional amount, as referred to in subsection (1)(c)(A)
29 and (D) of this section, of \$1,000:

30 (A) For [*himself or herself*] **the taxpayer** if [*he or she*] **the taxpayer** is blind at the close of the
31 taxable year; and

32 (B) For the spouse of the taxpayer if the spouse is blind as of the close of the taxable year and
33 an additional exemption is allowable to the taxpayer for such spouse for federal income tax purposes
34 under section 151(b) of the Internal Revenue Code. For purposes of this subparagraph, if the spouse
35 dies during the taxable year, the determination of whether such spouse is blind shall be made im-
36 mediately prior to death.

37 (c) In the case of an individual who is not married and is not a surviving spouse, paragraphs (a)
38 and (b) of this subsection shall be applied by substituting "\$1,200" for "\$1,000."

39 (d) For purposes of this subsection, an individual is blind only if [*his or her*] **the individual's**
40 central visual acuity does not exceed 20/200 in the better eye with correcting lenses, or if [*his or*
41 *her*] **the individual's** visual acuity is greater than 20/200 but is accompanied by a limitation in the
42 fields of vision such that the widest diameter of the visual field subtends an angle no greater than
43 20 degrees.

44 (8) In the case of an individual with respect to whom a deduction under section 151 of the
45 Internal Revenue Code is allowable for federal income tax purposes to another taxpayer for a tax-

1 able year beginning in the calendar year in which the individual's taxable year begins, the basic
 2 standard deduction (referred to in subsection (1)(c)(B) of this section) applicable to such individual
 3 for such individual's taxable year shall equal the lesser of:

4 (a) The amount allowed to the individual under section 63(c)(5) of the Internal Revenue Code for
 5 federal income tax purposes for the tax year for which the deduction is being claimed; or

6 (b) The amount determined under subsection (1)(c)(B) of this section.

7 **SECTION 3. The amendments to ORS 316.085 and 316.695 by sections 1 and 2 of this 2009**
 8 **Act apply to tax years beginning on or after January 1, 2011.**

9 **SECTION 4.** ORS 118.160 is amended to read:

10 118.160. (1) Except as provided in subsection (2) of this section:

11 (a) An inheritance tax return is not required with respect to the estates of decedents dying on
 12 or after January 1, 1987, and before January 1, 2003, unless a federal estate tax return is required
 13 to be filed; and

14 (b) An inheritance tax return is not required with respect to the estates of decedents dying on
 15 or after:

16 (A) January 1, 2003, and before January 1, 2004, unless the value of the gross estate is \$700,000
 17 or more;

18 (B) January 1, 2004, and before January 1, 2005, unless the value of the gross estate is \$850,000
 19 or more;

20 (C) January 1, 2005, and before January 1, 2006, unless the value of the gross estate is \$950,000
 21 or more; [or]

22 (D) January 1, 2006, **and before January 1, 2010**, unless the value of the gross estate is \$1
 23 million or more[.]; **or**

24 **(E) January 1, 2010, unless the value of the gross estate is \$2 million or more.**

25 (2) In every estate, whether or not subject to administration and whether or not a federal estate
 26 tax return is required to be filed, the executor shall at such times and in such manner as required
 27 by rules of the Department of Revenue, file with the department a return in a form provided by the
 28 department setting forth a list and description of all transfers of property, in trust or otherwise,
 29 made by the decedent in the lifetime of the decedent as a division or distribution of the estate of
 30 the decedent made within the three-year period ending on the date of death or intended to take ef-
 31 fect at or after death and any further data that the department requires to determine inheritance
 32 tax under this chapter.

33 **SECTION 5.** ORS 316.037 is amended to read:

34 316.037. (1)(a) A tax is imposed for each taxable year on the entire taxable income of every
 35 resident of this state. The amount of the tax shall be determined in accordance with the following
 36 table:

37 [_____]

39 <i>If taxable income is:</i>	<i>The tax is:</i>
40	
41 <i>Not over \$2,000</i>	<i>5% of</i>
42	<i>taxable</i>
43	<i>income</i>
44 <i>Over \$2,000 but not</i>	
45 <i>over \$5,000</i>	<i>\$100 plus 7%</i>

1 *of the excess*
 2 *over \$2,000*
 3
 4 *Over \$5,000* *\$310 plus 9%*
 5 *of the excess*
 6 *over \$5,000*
 7 [_____]
 8
 9 _____

11 If taxable income is:	The tax is:
12	
13 Not over \$5,800	5% of
14	taxable
15	income
16	
17 Over \$5,800 but not	
18 over \$14,600	\$100 plus 7%
19	of the excess
20	over \$5,800
21	
22 Over \$14,600	\$310 plus 9%
23	of the excess
24	over \$14,600
25	

26
 27 (b) For tax years beginning in each calendar year, the Department of Revenue shall adopt a
 28 table that shall apply in lieu of the table contained in paragraph (a) of this subsection, as follows:

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

31 (B) The rate applicable to any rate bracket as adjusted under subparagraph (A) of this para-
 32 graph shall not be changed.

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

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

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

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

44 (2) A tax is imposed for each taxable year upon the entire taxable income of every part-year
 45 resident of this state. The amount of the tax shall be computed under subsection (1) of this section

1 as if the part-year resident were a full-year resident and shall be multiplied by the ratio provided
 2 under ORS 316.117 to determine the tax on income derived from sources within this state.

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

6 **SECTION 6.** The amendments to ORS 316.037 by section 5 of this 2009 Act apply to tax
 7 years beginning on or after January 1, 2010.

8 **SECTION 7.** Sections 8 and 10 of this 2009 Act are added to and made a part of ORS
 9 chapter 316.

10 **SECTION 8.** (1) In addition to the other modifications to federal taxable income contained
 11 in this chapter, to derive Oregon taxable income there shall be subtracted from federal tax-
 12 able income 50 percent of the net capital gain incurred by the taxpayer during the tax year
 13 that is included in federal taxable income for Oregon tax purposes.

14 (2) A taxpayer may elect not to claim a subtraction under this section.

15 **SECTION 9.** Section 8 of this 2009 Act applies to tax years beginning on or after January
 16 1, 2011.

17 **SECTION 10.** Notwithstanding section 8 (1) of this 2009 Act, the subtraction allowed un-
 18 der section 8 of this 2009 Act shall be computed as follows:

19 (1) For tax years beginning on or after January 1, 2011, and before January 1, 2012, six
 20 percent of the net capital gain incurred by the taxpayer during the tax years that is included
 21 in federal taxable income for Oregon tax purposes shall be subtracted from federal taxable
 22 income.

23 (2) For tax years beginning on or after January 1, 2012, and before January 1, 2013, 17
 24 percent of the net capital gain incurred by the taxpayer during the tax years that is included
 25 in federal taxable income for Oregon tax purposes shall be subtracted from federal taxable
 26 income.

27 (3) For tax years beginning on or after January 1, 2013, and before January 1, 2014, 28
 28 percent of the net capital gain incurred by the taxpayer during the tax years that is included
 29 in federal taxable income for Oregon tax purposes shall be subtracted from federal taxable
 30 income.

31 (4) For tax years beginning on or after January 1, 2014, and before January 1, 2015, 39
 32 percent of the net capital gain incurred by the taxpayer during the tax years that is included
 33 in federal taxable income for Oregon tax purposes shall be subtracted from federal taxable
 34 income.

35 **SECTION 11.** ORS 316.045 is amended to read:

36 316.045. (1) As used in this section:

37 (a) "Farming" means:

38 (A) Raising, harvesting and selling crops;

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

41 (C) Dairying and selling dairy products;

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

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

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

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

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

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

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

13 (a) The gain is:

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

17 (B) Section 1231 gain.

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

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

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

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

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

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

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

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

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

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

43 **(4) If a taxpayer claims a subtraction under section 8 of this 2009 Act for the tax year,**
44 **any net long-term capital gain that would otherwise be subject to tax under this section shall**
45 **be subject to tax at the rates established under ORS 316.037 for that tax year.**

1 **SECTION 12.** The amendments to ORS 316.045 by section 11 of this 2009 Act apply to tax
2 years beginning on or after January 1, 2011.

3 **SECTION 13.** Sections 14 and 16 of this 2009 Act are added to and made a part of ORS
4 chapter 317.

5 **SECTION 14.** (1) In addition to the other modifications to federal taxable income con-
6 tained in this chapter, to derive Oregon taxable income there shall be subtracted from fed-
7 eral taxable income 50 percent of the net capital gain incurred by the taxpayer during the
8 tax year that is included in federal taxable income for Oregon tax purposes.

9 (2) A taxpayer may elect not to claim a subtraction under this section.

10 **SECTION 15.** Section 14 of this 2009 Act applies to tax years beginning on or after Jan-
11 uary 1, 2012.

12 **SECTION 16.** Notwithstanding section 14 (1) of this 2009 Act, the subtraction allowed
13 under section 14 of this 2009 Act shall be computed as follows:

14 (1) For tax years beginning on or after January 1, 2012, and before January 1, 2013, two
15 percent of the net capital gain incurred by the taxpayer during the tax years that is included
16 in federal taxable income for Oregon tax purposes shall be subtracted from federal taxable
17 income.

18 (2) For tax years beginning on or after January 1, 2013, and before January 1, 2014, 17
19 percent of the net capital gain incurred by the taxpayer during the tax years that is included
20 in federal taxable income for Oregon tax purposes shall be subtracted from federal taxable
21 income.

22 **SECTION 17.** ORS 317.063 is amended to read:

23 317.063. (1) As used in this section:

24 (a) "Farming" means:

25 (A) Raising, harvesting and selling crops;

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

28 (C) Dairying and selling dairy products;

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

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

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

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

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

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

43 (2) Notwithstanding ORS 317.061, taxable income that consists of net long-term capital gain shall
44 be subject to tax under this chapter at a rate of five percent if all of the following conditions apply:

45 (a) The gain is:

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

4 (B) Section 1231 gain.

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

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

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

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

11 (d) The sale or exchange constitutes a substantially complete termination of all of the taxpayer's
12 ownership interests in a trade or business that is engaged in farming or a substantially complete
13 termination of all of the taxpayer's ownership interests in property that is employed in the trade
14 or business of farming.

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

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

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

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

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

29 **(4) If a taxpayer claims a subtraction under section 14 of this 2009 Act for the tax year,**
30 **any net long-term capital gain that would otherwise be subject to tax under this section shall**
31 **be subject to tax at the rates established under ORS 317.061 for that tax year.**

32 **SECTION 18. The amendments to ORS 317.063 by section 17 of this 2009 Act apply to tax**
33 **years beginning on or after January 1, 2012.**

34 **SECTION 19. This 2009 Act takes effect on the 91st day after the date on which the**
35 **regular session of the Seventy-fifth Legislative Assembly adjourns sine die.**

36