

# House Bill 3412

Sponsored by COMMITTEE ON REVENUE

## 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**.

Increases personal income tax rate for taxpayers with taxable income exceeding certain level.  
Imposes franchise tax on certain corporations doing business in state.  
Applies to tax years beginning on or after January 1, 2010.  
Takes effect on 91st day following adjournment sine die.

## A BILL FOR AN ACT

Relating to income taxation; creating new provisions; amending ORS 314.732 and 316.037; prescribing an effective date; and providing for revenue raising that requires approval by a three-fifths majority.

**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:

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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 <b>but not over \$125,000</b>	\$310 plus 9% of the excess over \$5,000
<b>Over \$125,000</b>	<b>\$11,100 plus 11% of the excess over \$125,000</b>

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**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.

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(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 paragraph shall not be changed.

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

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

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

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

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

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

**SECTION 2. Sections 3 and 4 of this 2009 Act are added to and made a part of ORS chapter 317.**

**SECTION 3. (1) Notwithstanding ORS 317.010 (10), 317.061, 317.063, 317.070 and 317.090, there is imposed a franchise tax on the taxable margin of any corporation, including an S corporation, doing business in this state with gross income in excess of \$500,000 for the tax year.**

**(2) The tax imposed under this section shall be in lieu of any other tax imposed under this chapter.**

**(3) Gross margin for the tax year shall be determined by subtracting from the taxpayer's gross income the greater of:**

- (a) Compensation paid by the taxpayer;**
- (b) The cost of goods sold by the taxpayer; or**
- (c) Thirty percent of the taxpayer's gross income.**

**(4) Taxable margin shall be determined by apportioning gross margin, using the apportionment calculations as they are applicable to income under ORS 314.280 and 314.605 to 314.675.**

**(5) The tax imposed under this section shall be at a rate of one percent of taxable margin.**

**(6) Notwithstanding subsection (5) of this section, the tax imposed on a taxpayer primarily engaged in retail or wholesale trade shall be at a rate of 0.5 percent of taxable margin. A taxpayer is primarily engaged in retail or wholesale trade if:**

1 (a) The total revenue from its retail and wholesale trade activities is greater than its  
2 total revenue from other activities;

3 (b) Except in the case of an eating or drinking establishment, less than 50 percent of its  
4 total revenue in retail or wholesale trade derives from the sale of products that it produces;  
5 or

6 (c) It is not primarily engaged in utilities or telecommunications, as those terms are  
7 defined in ORS 314.280.

8 (7) A taxpayer that is required to pay the tax imposed under this section may not claim  
9 any subtractions, deductions or credits otherwise allowable under this chapter or ORS  
10 chapter 315.

11 **SECTION 4.** The Department of Revenue may adopt any rules necessary for the calcu-  
12 lation and collection of the tax imposed under section 3 of this 2009 Act, consistent with the  
13 provisions of this chapter and ORS chapters 305, 314 and 318.

14 **SECTION 5.** ORS 314.732 is amended to read:

15 314.732. (1) Except as otherwise provided in ORS 314.740, 314.742 and 317.090 **and section 3 of**  
16 **this 2009 Act**, an S corporation shall not be subject to the taxes imposed by ORS chapter 316, 317  
17 or 318.

18 (2)(a) Subject to paragraphs (b) to (d) of this subsection, the taxable income of an S corporation  
19 shall be computed pursuant to section 1363(b) of the Internal Revenue Code, with the modifications,  
20 additions and subtractions provided in this chapter and ORS chapter 316.

21 (b) Except as otherwise provided under this chapter and ORS chapter 316, 317 or 318, and except  
22 as inconsistent with ORS 314.730 to 314.752, subchapter C, chapter 1, Internal Revenue Code, shall  
23 apply to an S corporation and its shareholders for Oregon tax purposes. For Oregon tax purposes,  
24 the provisions of section 1371 of the Internal Revenue Code shall apply, subject to the modifications,  
25 additions and subtractions under this chapter or ORS chapter 316, 317 or 318 and any provisions to  
26 the contrary in this chapter or ORS chapter 316, 317 or 318.

27 (c) Notwithstanding ORS 317.476, 317.478 or 317.479, no carryforward, arising for a taxable year  
28 for which a corporation is a C corporation, may be carried to a taxable year for which such cor-  
29 poration is an S corporation.

30 (d) Notwithstanding ORS 317.476 or other law, no carryforward, and no carryback, shall arise  
31 at the corporate level for a taxable year for which a corporation is an S corporation.

32 **SECTION 6.** The amendments to ORS 314.732 and 316.037 by sections 1 and 5 of this 2009  
33 Act and sections 3 and 4 of this 2009 Act apply to tax years beginning on or after January  
34 1, 2010.

35 **SECTION 7.** This 2009 Act takes effect on the 91st day after the date on which the reg-  
36 ular session of the Seventy-fifth Legislative Assembly adjourns sine die.  
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