

House Bill 2193

Ordered printed by the Speaker pursuant to House Rule 12.00A (5). Pre-session filed (at the request of House Interim Committee on Sustainability and Economic Development)

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**.

Modifies definition of "material participation" for purposes of subtraction for investment of severance pay in small business. Adjusts start of qualifying period from date of termination to date of investment. Requires taxpayer to file amended return that includes as income amount previously subtracted if subtraction is later disallowed.

Applies to tax years beginning on or after January 1, 2011, and before January 1, 2014.

Takes effect on 91st day following adjournment sine die.

A BILL FOR AN ACT

1
2 Relating to subtraction for investment of severance pay in small business; creating new provisions;
3 amending section 2, chapter 66, Oregon Laws 2010; and prescribing an effective date.

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

5 **SECTION 1.** Section 2, chapter 66, Oregon Laws 2010, is amended to read:

6 **Sec. 2.** (1) As used in this section:

7 (a) "Invest" means to exchange cash for equity, debt, convertible debt or management responsi-
8 bilities, accompanied by terms that substantiate ownership or control of an interest in a business.
9 "Invest" does not mean to make a loan to a business.

10 (b) "Material participation" [*has the meaning given that term in section 469 of the Internal Re-*
11 *venue Code.*] **means that a taxpayer has:**

12 **(A) Worked more than 500 hours in a small business during a calendar year;**

13 **(B) Worked more than 100 hours, and more than any other owner or employee, in a small**
14 **business during a calendar year; or**

15 **(C) Performed substantially all of the work of a small business during a calendar year.**

16 (c) "Severance pay" means funds paid to an employee upon termination of employment, other
17 than back wages, vacation pay or sick pay.

18 (d) "Small business" has the meaning given that term in ORS 183.310.

19 (2) There shall be subtracted from federal taxable income an amount equal to severance pay that
20 a taxpayer receives during the tax year and invests in a new or existing small business in this state
21 if:

22 (a) The investment occurs on or before the due date for the return for the tax year or the ex-
23 piration of the extension period for filing that return, if any;

24 (b) The investment continues for at least 24 months following [*termination of employment*] **the**
25 **date of investment;**

26 (c) The taxpayer materially participates in the small business;

27 (d) The taxpayer has not previously claimed a subtraction under this section; and

28 (e) The small business is not the employer that paid the severance pay and does not have any

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 owner in common with the employer that paid the severance pay.

2 (3) The subtraction under this section may not exceed the lesser of:

3 (a) The minimum balance of principal that remains invested by the taxpayer in the small busi-
4 ness at the close of any month during the 24 months following *[termination of employment]* **the date**
5 **of investment**; or

6 (b) \$500,000.

7 (4) If at any time the Department of Revenue **or a taxpayer** determines that *[a]* **the** taxpayer
8 is not in compliance with any of the provisions of this section, the *[department shall disallow the]*
9 subtraction under this section **shall be disallowed**. Upon this disallowance, *[the department shall*
10 *determine the amount of tax due absent the subtraction under this section and immediately shall collect*
11 *any taxes due by reason of the disallowance]* **the taxpayer shall immediately file an amended re-**
12 **turn for the tax year in which the subtraction was made and include as an addition to income**
13 **for the tax year any amount previously subtracted under this section.**

14 (5) The Department of Revenue shall establish by rule procedures for administering this section,
15 including procedures for verifying the receipt of severance pay by the taxpayer.

16 **SECTION 2. The amendments to section 2, chapter 66, Oregon Laws 2010, by section 1**
17 **of this 2011 Act apply to tax years beginning on or after January 1, 2011, and before January**
18 **1, 2014.**

19 **SECTION 3. This 2011 Act takes effect on the 91st day after the date on which the 2011**
20 **session of the Seventy-sixth Legislative Assembly adjourns sine die.**

21