

# House Bill 2412

Sponsored by Representative READ, Senator HASS; Representatives BARKER, DOHERTY, GELSER (Pre-session filed.)

## 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 certain capital gains of personal income taxpayers. Transfers amount equal to estimated revenue from tax on all net capital gains to Oregon Rainy Day Fund.

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

Takes effect on 91st day following adjournment sine die.

## A BILL FOR AN ACT

Relating to tax on capital gains; creating new provisions; amending ORS 293.148, 316.037 and 316.122; and prescribing an effective date.

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

**SECTION 1.** ORS 316.037, as amended by section 1, chapter 746, Oregon Laws 2009, 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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12 If taxable income is:                      The tax is:

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14 Not over \$2,000                              5% of  
15    taxable  
16    income

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18 Over \$2,000 but not  
19     over \$5,000                              \$100 plus 7%  
20    of the excess  
21    over \$2,000

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23 Over \$5,000 but not  
24     over \$125,000                            \$310 plus 9%  
25    of the excess  
26    over \$5,000

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28 Over \$125,000 but not  
29     over \$250,000                            \$11,110 plus 10.8%  
30    of the excess  
    over \$125,000

**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	Over \$250,000	\$24,610 plus 11%
2		of the excess
3		over \$250,000

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5  
6 (b) For tax years beginning in each calendar year, the Department of Revenue shall adopt a  
7 table that shall apply in lieu of the table contained in paragraph (a) of this subsection, as follows:

8 (A) Except as provided in subparagraph (D) of this paragraph, the minimum and maximum dollar  
9 amounts for each bracket for which a tax is imposed shall be increased by the cost-of-living adjust-  
10 ment for the calendar year.

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

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

15 (D) The rate brackets applicable to taxable income in excess of \$125,000 may not be adjusted.

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

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

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

25 **(2) Notwithstanding subsection (1) of this section, any gain that is treated as net capital**  
26 **gain for federal tax purposes and that is included in taxable income in this state shall be**  
27 **taxed at the lesser of the rate applicable under subsection (1) of this section or nine percent.**

28 [(2)] (3) A tax is imposed for each taxable year upon the entire taxable income of every part-year  
29 resident of this state. The amount of the tax shall be computed under [subsection (1)] **subsections**  
30 **(1) and (2)** of this section as if the part-year resident were a full-year resident and shall be multi-  
31 plied by the ratio provided under ORS 316.117 to determine the tax on income derived from sources  
32 within this state.

33 [(3)] (4) A tax is imposed for each taxable year on the taxable income of every full-year non-  
34 resident that is derived from sources within this state. The amount of the tax shall be determined  
35 in accordance with the table set forth in [subsection (1)] **subsections (1) and (2)** of this section.

36 **SECTION 2.** ORS 316.037, as amended by sections 1 and 2, chapter 746, Oregon Laws 2009, is  
37 amended to read:

38 316.037. (1)(a) A tax is imposed for each taxable year on the entire taxable income of every  
39 resident of this state. The amount of the tax shall be determined in accordance with the following  
40 table:

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43	If taxable income is:	The tax is:
44		
45	Not over \$2,000	5% of

1		taxable
2		income
3		
4	Over \$2,000 but not	
5	over \$5,000	\$100 plus 7%
6		of the excess
7		over \$2,000
8		
9	Over \$5,000 but not	
10	over \$125,000	\$310 plus 9%
11		of the excess
12		over \$5,000
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14	Over \$125,000	\$11,110 plus 9.9%
15		of the excess
16		over \$125,000

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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) Except as provided in subparagraph (D) of this paragraph, the minimum and maximum dollar amounts for each 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.

(D) The rate brackets applicable to taxable income in excess of \$125,000 may not 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) Notwithstanding subsection (1) of this section, any gain that is treated as net capital gain for federal tax purposes and that is included in taxable income in this state shall be taxed at the lesser of the rate applicable under subsection (1) of this section or nine percent.**

[2] (3) 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)] **subsections (1) and (2)** 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.

1        [(3)] (4) A tax is imposed for each taxable year on the taxable income of every full-year non-  
 2 resident that is derived from sources within this state. The amount of the tax shall be determined  
 3 in accordance with the table set forth in [subsection (1)] **subsections (1) and (2)** of this section.

4        **SECTION 3.** ORS 316.122 is amended to read:

5        316.122. (1) If the federal taxable income of husband and wife (one being a part-year resident and  
 6 the other a nonresident) is determined on a joint federal return, their taxable income in this state  
 7 shall be separately determined, unless they elect to file a joint return, in which case their tax on  
 8 their joint income shall be determined in this state pursuant to ORS 316.037 [(3)] (4).

9        (2) If the federal taxable income of husband and wife (one being a full-year resident and the  
 10 other a part-year resident) is determined on a joint federal return, their taxable income in this state  
 11 shall be separately determined, unless they elect to file a joint return, in which case their tax on  
 12 their joint income shall be determined in this state pursuant to ORS 316.037 [(2)] (3).

13        (3) If the federal taxable income of husband and wife (one being a full-year resident and the  
 14 other a nonresident) is determined on a joint federal return, their taxable income in the state shall  
 15 be separately determined, unless they elect to file a joint return, in which case their tax on their  
 16 joint income shall be determined in this state pursuant to ORS 316.037 [(3)] (4).

17        (4) For purposes of computing the tax of a husband and wife under this section, if one of the  
 18 spouses is a full-year resident individual, then as used in ORS 316.037 [(2) or] (3) **or (4)**, that spouse's  
 19 taxable income derived from Oregon sources is that spouse's entire federal taxable income, defined  
 20 in the laws of the United States, with the modifications, additions and subtractions provided in this  
 21 chapter and other laws of this state applicable to personal income taxation.

22        (5) The provisions of ORS 316.367 with respect to joint returns apply if both husband and wife  
 23 are part-year residents or full-year nonresidents.

24        **SECTION 4. Except as provided in ORS 293.148, on or before July 1 of each year, begin-**  
 25 **ning with July 1, 2012, the Department of Revenue shall:**

26        (1) **For tax years beginning on or after January 1 of the preceding year and ending before**  
 27 **January 1 of the current year, estimate the amount of personal income and corporate excise**  
 28 **and income tax revenue received by the department that is attributable to net capital gain;**  
 29 **and**

30        (2) **Transfer an amount equal to the estimate required under subsection (1) of this sec-**  
 31 **tion to the Oregon Rainy Day Fund established in ORS 293.144.**

32        **SECTION 5.** ORS 293.148 is amended to read:

33        293.148. (1) If the moneys in the Oregon Rainy Day Fund established by ORS 293.144 just prior  
 34 to the time of a transfer scheduled under ORS 293.144 (3) or 293.146 **or section 4 of this 2011 Act**  
 35 equal at least 7-1/2 percent of the amount of General Fund revenues collected during the prior  
 36 biennium, moneys that would otherwise be transferred to the Oregon Rainy Day Fund shall be de-  
 37 posited in the General Fund.

38        (2) If the moneys in the Oregon Rainy Day Fund just prior to the time of a transfer scheduled  
 39 under ORS 293.144 (3) or 293.146 **or section 4 of this 2011 Act** do not equal at least 7-1/2 percent  
 40 of the amount of General Fund revenues collected during the prior biennium, the transfer to the  
 41 Oregon Rainy Day Fund shall be made regardless of whether that transfer increases the amount in  
 42 the Oregon Rainy Day Fund to at least 7-1/2 percent of the amount of General Fund revenues col-  
 43 lected during the prior biennium.

44        **SECTION 6. Section 4 of this 2011 Act and the amendments to ORS 293.148, 316.037 and**  
 45 **316.122 by sections 1, 2, 3 and 5 of this 2011 Act apply to tax years beginning on or after**

1 **January 1, 2011.**

2 **SECTION 7. This 2011 Act takes effect on the 91st day after the date on which the 2011**  
3 **session of the Seventy-sixth Legislative Assembly adjourns sine die.**

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