

# House Bill 3283

Sponsored by Representative BREWER; Senator STARR

## 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 and corporate income and excise tax-payers if amount equal to gain is invested in certain investments during tax year.

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 rate of tax on capital gains; creating new provisions; amending ORS 316.037, 316.122, 317.061 and 318.020; 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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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 but not over \$125,000	\$310 plus 9% of the excess over \$5,000
Over \$125,000 but not over \$250,000	\$11,110 plus 10.8% 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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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 rate of five percent, if an amount equal to the gain is invested in an Oregon**  
28 **investment during the tax year.**

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

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

37 **(5) As used in this section:**

38 (a) "Oregon business" has the meaning given that term in ORS 470.050.

39 (b) "Equipment" means property as described in section 1245(c)(1) of the Internal Re-  
40 venue Code that is tangible personal property used in an Oregon business.

41 (c) "Oregon investment" means an investment in Oregon business, equipment or  
42 workforce.

43 (d) "Workforce" means salaries, wages and benefits paid to employees of the taxpayer for  
44 service performed in this state.

45 **SECTION 2.** ORS 316.037, as amended by sections 1 and 2, chapter 746, Oregon Laws 2009, is

1 amended to read:

2 316.037. (1)(a) A tax is imposed for each taxable year on the entire taxable income of every  
 3 resident of this state. The amount of the tax shall be determined in accordance with the following  
 4 table:

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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,

1 the increase shall be rounded to the next lower multiple of \$50.

2 **(2) Notwithstanding subsection (1) of this section, any gain that is treated as net capital**  
 3 **gain for federal tax purposes and that is included in taxable income in this state shall be**  
 4 **taxed at the rate of five percent, if an amount equal to the gain is invested in an Oregon**  
 5 **investment during the tax year.**

6 [(2)] (3) A tax is imposed for each taxable year upon the entire taxable income of every part-year  
 7 resident of this state. The amount of the tax shall be computed under [subsection (1)] **subsections**  
 8 **(1) and (2)** of this section as if the part-year resident were a full-year resident and shall be multi-  
 9 plied by the ratio provided under ORS 316.117 to determine the tax on income derived from sources  
 10 within this state.

11 [(3)] (4) A tax is imposed for each taxable year on the taxable income of every full-year non-  
 12 resident that is derived from sources within this state. The amount of the tax shall be determined  
 13 in accordance with [the table set forth in subsection (1)] **subsections (1) and (2)** of this section.

14 **(5) As used in this section:**

15 **(a) “Oregon business” has the meaning given that term in ORS 470.050.**

16 **(b) “Equipment” means property as described in section 1245(c)(1) of the Internal Re-**  
 17 **venue Code that is tangible personal property used in an Oregon business.**

18 **(c) “Oregon investment” means an investment in Oregon business, equipment or**  
 19 **workforce.**

20 **(d) “Workforce” means salaries, wages and benefits paid to employees of the taxpayer for**  
 21 **service performed in this state.**

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

23 316.122. (1) If the federal taxable income of husband and wife (one being a part-year resident and  
 24 the other a nonresident) is determined on a joint federal return, their taxable income in this state  
 25 shall be separately determined, unless they elect to file a joint return, in which case their tax on  
 26 their joint income shall be determined in this state pursuant to ORS 316.037 [(3)] (4).

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

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

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

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

42 **SECTION 4.** ORS 317.061, as amended by sections 5 and 7, chapter 745, Oregon Laws 2009, is  
 43 amended to read:

44 317.061. (1) The rate of the tax imposed by and computed under this chapter is:

45 [(1)] **(a)** Six and six-tenths percent of the first \$250,000 of taxable income, or fraction thereof;

1 and

2 [(2)] (b) Seven and six-tenths percent of any amount of taxable income in excess of \$250,000.

3 (2) Notwithstanding subsection (1) of this section, any gain that is treated as net capital  
4 gain for federal tax purposes and that is included in taxable income in this state shall be  
5 taxed at the rate of five percent, if an amount equal to the gain is invested in an Oregon  
6 investment during the tax year.

7 (3) As used in this section:

8 (a) "Oregon business" has the meaning given that term in ORS 470.050.

9 (b) "Equipment" means property as described in section 1245(c)(1) of the Internal Re-  
10 venue Code that is tangible personal property used in an Oregon business.

11 (c) "Oregon investment" means an investment in Oregon business, equipment or  
12 workforce.

13 (d) "Workforce" means salaries, wages and benefits paid to employees of the taxpayer for  
14 service performed in this state.

15 **SECTION 5.** ORS 317.061, as amended by sections 5, 7 and 9, chapter 745, Oregon Laws 2009,  
16 is amended to read:

17 317.061. (1) The rate of the tax imposed by and computed under this chapter is:

18 [(1)] (a) Six and six-tenths percent of the first \$10 million of taxable income, or fraction thereof;  
19 and

20 [(2)] (b) Seven and six-tenths percent of any amount of taxable income in excess of \$10 million.

21 (2) Notwithstanding subsection (1) of this section, any gain that is treated as net capital  
22 gain for federal tax purposes and that is included in taxable income in this state shall be  
23 taxed at the rate of five percent, if an amount equal to the gain is invested in an Oregon  
24 investment during the tax year.

25 (3) As used in this section:

26 (a) "Oregon business" has the meaning given that term in ORS 470.050.

27 (b) "Equipment" means property as described in section 1245(c)(1) of the Internal Re-  
28 venue Code that is tangible personal property used in an Oregon business.

29 (c) "Oregon investment" means an investment in Oregon business, equipment or  
30 workforce.

31 (d) "Workforce" means salaries, wages and benefits paid to employees of the taxpayer for  
32 service performed in this state.

33 **SECTION 6.** ORS 318.020 is amended to read:

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

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

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

43 **SECTION 7.** (1) The amendments to ORS 316.037 by section 1 of this 2011 Act apply to tax  
44 years beginning on or after January 1, 2011, and before January 1, 2012.

45 (2) The amendments to ORS 316.037 by section 2 of this 2011 Act apply to tax years be-

1 **ginning on or after January 1, 2012.**

2 **(3) The amendments to ORS 317.061 by section 4 of this 2011 Act apply to tax years be-**  
3 **ginning on or after January 1, 2011, and before January 1, 2013.**

4 **(4) The amendments to ORS 317.061 by section 5 of this 2011 Act apply to tax years be-**  
5 **ginning on or after January 1, 2013.**

6 **(5) The amendments to ORS 316.122 and 318.020 by sections 3 and 6 of this 2011 Act apply**  
7 **to tax years beginning on or after January 1, 2011.**

8 **SECTION 8. This 2011 Act takes effect on the 91st day after the date on which the 2011**  
9 **regular session of the Seventy-sixth Legislative Assembly adjourns sine die.**

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