

# House Bill 3420

Sponsored by Representative READ; Representatives BAILEY, BARKER, BREWER, GARRETT, HUNT, LINDSAY, Senators HASS, 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 taxpayers if, after effective date of Act, amount equal to gain is invested as seed capital in emerging growth business during tax year.

Applies to tax years beginning on or after January 1, 2011, and before January 1, 2015.

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.** Section 2 of this 2011 Act is added to and made a part of ORS chapter 285C.

**SECTION 2.** (1) As used in this section, "emerging growth business" and "seed capital" have the meanings given those terms in ORS 348.701.

(2) The Oregon Business Development Commission shall by rule establish criteria governing the allowance of discounted tax rates under this section. The Oregon Business Development Department shall provide a process for certifying investments that are eligible for the rates allowed under this section.

(3) On or after the effective date of this 2011 Act, if an amount equal to the gain is invested as seed capital in an emerging growth business doing business in this state, according to industry sector as defined by the commission by rule, the rate allowed under this section shall be:

(a) For targeted sector industries, 90 percent.

(b) For key sector industries, 85 percent.

(c) For critical sector industries, 75 percent.

**SECTION 3.** 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	

**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		income
2		
3	Over \$2,000 but not	
4	over \$5,000	\$100 plus 7%
5		of the excess
6		over \$2,000
7		
8	Over \$5,000 but not	
9	over \$125,000	\$310 plus 9%
10		of the excess
11		over \$5,000
12	Over \$125,000 but not	
13	over \$250,000	\$11,110 plus 10.8%
14		of the excess
15		over \$125,000
16		
17	Over \$250,000	\$24,610 plus 11%
18		of the excess
19		over \$250,000

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21

22 (b) For tax years beginning in each calendar year, the Department of Revenue shall adopt a

23 table that shall apply in lieu of the table contained in paragraph (a) of this subsection, as follows:

24 (A) Except as provided in subparagraph (D) of this paragraph, the minimum and maximum dollar

25 amounts for each bracket for which a tax is imposed shall be increased by the cost-of-living adjust-

26 ment for the calendar year.

27 (B) The rate applicable to any rate bracket as adjusted under subparagraph (A) of this para-

28 graph shall not be changed.

29 (C) The amounts setting forth the tax, to the extent necessary to reflect the adjustments in the

30 rate brackets, shall be adjusted.

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

32 (c) For purposes of paragraph (b) of this subsection, the cost-of-living adjustment for any calen-

33 dar year is the percentage (if any) by which the monthly averaged U.S. City Average Consumer

34 Price Index for the 12 consecutive months ending August 31 of the prior calendar year exceeds the

35 monthly averaged index for the second quarter of the calendar year 1992.

36 (d) As used in this subsection, "U.S. City Average Consumer Price Index" means the U.S. City

37 Average Consumer Price Index for All Urban Consumers (All Items) as published by the Bureau of

38 Labor Statistics of the United States Department of Labor.

39 (e) If any increase determined under paragraph (b) of this subsection is not a multiple of \$50,

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

41 **(2) Notwithstanding subsection (1) of this section, any gain that is treated as net capital**

42 **gain for federal tax purposes and that is included in taxable income in this state shall be**

43 **taxed at the discounted rate provided in section 2 of this 2011 Act, if an amount equal to the**

44 **gain is invested as seed capital in an emerging growth business during the tax year.**

45 [(2)] (3) A tax is imposed for each taxable year upon the entire taxable income of every part-year

1 resident of this state. The amount of the tax shall be computed under [subsection (1)] **subsections**  
 2 **(1) and (2)** of this section as if the part-year resident were a full-year resident and shall be multi-  
 3 plied by the ratio provided under ORS 316.117 to determine the tax on income derived from sources  
 4 within this state.

5 [(3)] **(4)** A tax is imposed for each taxable year on the taxable income of every full-year non-  
 6 resident that is derived from sources within this state. The amount of the tax shall be determined  
 7 in accordance with [the table set forth in subsection (1) of] **subsections (1) and (2) of** this section.

8 **SECTION 4.** ORS 316.037, as amended by sections 1 and 2, chapter 746, Oregon Laws 2009, is  
 9 amended to read:

10 316.037. (1)(a) A tax is imposed for each taxable year on the entire taxable income of every  
 11 resident of this state. The amount of the tax shall be determined in accordance with the following  
 12 table:

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15 If taxable income is:	The tax is:
17 Not over \$2,000	5% of 18 taxable 19 income
21 Over \$2,000 but not 22 over \$5,000	\$100 plus 7% 23 of the excess 24 over \$2,000
26 Over \$5,000 but not 27 over \$125,000	\$310 plus 9% 28 of the excess 29 over \$5,000
31 Over \$125,000	\$11,110 plus 9.9% 32 of the excess 33 over \$125,000

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35  
 36 (b) For tax years beginning in each calendar year, the Department of Revenue shall adopt a  
 37 table that shall apply in lieu of the table contained in paragraph (a) of this subsection, as follows:

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

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

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

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

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

5 (d) As used in this subsection, "U.S. City Average Consumer Price Index" means the U.S. City  
 6 Average 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 (e) If any increase determined under paragraph (b) of this subsection is not a multiple of \$50,  
 9 the increase shall be rounded to the next lower multiple of \$50.

10 **(2) Notwithstanding subsection (1) of this section, any gain that is treated as net capital**  
 11 **gain for federal tax purposes and that is included in taxable income in this state shall be**  
 12 **taxed at the discounted rate provided in section 2 of this 2011 Act, if an amount equal to the**  
 13 **gain is invested as seed capital in an emerging growth business during the tax year.**

14 [(2)] (3) A tax is imposed for each taxable year upon the entire taxable income of every part-year  
 15 resident of this state. The amount of the tax shall be computed under [subsection (1)] **subsections**  
 16 **(1) and (2)** of this section as if the part-year resident were a full-year resident and shall be multi-  
 17 plied by the ratio provided under ORS 316.117 to determine the tax on income derived from sources  
 18 within this state.

19 [(3)] (4) A tax is imposed for each taxable year on the taxable income of every full-year non-  
 20 resident that is derived from sources within this state. The amount of the tax shall be determined  
 21 in accordance with [the table set forth in subsection (1)] **subsections (1) and (2)** of this section.

22 **SECTION 5.** 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 6.** 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 discounted rate provided in section 2 of this 2011 Act, if an amount equal to the  
6 gain is invested as seed capital in an emerging growth business during the tax year.

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

9 317.061. (1) The rate of the tax imposed by and computed under this chapter is:

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

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

13 (2) Notwithstanding subsection (1) of this section, any gain that is treated as net capital  
14 gain for federal tax purposes and that is included in taxable income in this state shall be  
15 taxed at the discounted rate provided in section 2 of this 2011 Act, if an amount equal to the  
16 gain is invested as seed capital in an emerging growth business during the tax year.

17 SECTION 8. ORS 318.020 is amended to read:

18 318.020. (1) There hereby is imposed upon every corporation for each taxable year a tax at the  
19 rate provided in ORS 317.061 upon its Oregon taxable income derived from sources within this state,  
20 other than income for which the corporation is subject to the tax imposed by ORS chapter 317 ac-  
21 cording to or measured by its Oregon taxable income.

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

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

27 SECTION 9. (1) The amendments to ORS 316.037 by section 3 of this 2011 Act apply to tax  
28 years beginning on or after January 1, 2011, and before January 1, 2012.

29 (2) The amendments to ORS 316.037 by section 4 of this 2011 Act apply to tax years be-  
30 ginning on or after January 1, 2012, and before January 1, 2015.

31 (3) The amendments to ORS 317.061 by section 6 of this 2011 Act apply to tax years be-  
32 ginning on or after January 1, 2011, and before January 1, 2013.

33 (4) The amendments to ORS 317.061 by section 7 of this 2011 Act apply to tax years be-  
34 ginning on or after January 1, 2013, and before January 1, 2015.

35 (5) The amendments to ORS 316.122 and 318.020 by sections 5 and 8 of this 2011 Act apply  
36 to tax years beginning on or after January 1, 2011, and before January 1, 2015.

37 SECTION 10. ORS 316.037, as amended by sections 1 and 2, chapter 746, Oregon Laws 2009,  
38 and section 4 of this 2011 Act, is amended to read:

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

42 \_\_\_\_\_

43

44 If taxable income is:

The tax is:

45

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

18  
19

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

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

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

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

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

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

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

39 *[(2) Notwithstanding subsection (1) of this section, any gain that is treated as net capital gain for*  
40 *federal tax purposes and that is included in taxable income in this state shall be taxed at the dis-*  
41 *counted rate provided in section 2 of this 2011 Act, if an amount equal to the gain is invested as seed*  
42 *capital in an emerging growth business during the tax year.]*

43 **[(3)] (2)** A tax is imposed for each taxable year upon the entire taxable income of every part-year  
44 resident of this state. The amount of the tax shall be computed under *[subsections (1) and (2)]*  
45 **subsection (1)** of this section as if the part-year resident were a full-year resident and shall be

1 multiplied by the ratio provided under ORS 316.117 to determine the tax on income derived from  
2 sources within this state.

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

6 **SECTION 11.** ORS 316.122, as amended by section 5 of this 2011 Act, is amended to read:

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

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

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

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

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

26 **SECTION 12.** ORS 317.061, as amended by sections 5, 7 and 9, chapter 745, Oregon Laws 2009,  
27 and section 7 of this 2011 Act, is amended to read:

28 317.061. [(1)] The rate of the tax imposed by and computed under this chapter is:

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

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

32 [(2) Notwithstanding subsection (1) of this section, any gain that is treated as net capital gain for  
33 federal tax purposes and that is included in taxable income in this state shall be taxed at the dis-  
34 counted rate provided in section 2 of this 2011 Act, if an amount equal to the gain is invested as seed  
35 capital in an emerging growth business during the tax year.]

36 **SECTION 13.** ORS 318.020, as amended by section 8 of this 2011 Act, is amended to read:

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

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

44 (3) **Income that constitutes net long-term capital gain described in ORS 317.063 shall be**  
45 **taxed at the rate imposed under ORS 317.063.**

1        **SECTION 14.** The amendments to ORS 316.037, 316.122, 317.061 and 318.020 by sections 10  
2 to 13 of this 2011 Act apply to tax years beginning on or after January 1, 2015.

3        **SECTION 15.** This 2011 Act takes effect on the 91st day after the date on which the 2011  
4 regular session of the Seventy-sixth Legislative Assembly adjourns sine die.

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