

Senate Bill 883

Sponsored by Senator OLSEN; Senators TELFER, THOMSEN, Representatives CONGER, MCLANE, PARRISH

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.

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 decreases in capital gains tax rates; creating new provisions; amending ORS 316.037, 316.045, 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:

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

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 a rate equal to 0.5 multiplied by the rate applicable under subsection (1) of this**
28 **section.**

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)] **subsections (1) and (2)** of this section.

37 **SECTION 2.** ORS 316.037, as amended by sections 1 and 2, chapter 746, Oregon Laws 2009, is
38 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:

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

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**

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

41 **taxed at a rate equal to 0.5 multiplied by the rate applicable under subsection (1) of this**

42 **section.**

43 [(2)] (3) 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 [subsection (1)] **subsections**

45 **(1) and (2)** of this section as if the part-year resident were a full-year resident and shall be multi-

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

3 [(3)] (4) 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 [*the table set forth in subsection (1)*] **subsections (1) and (2)** of this section.

6 **SECTION 3.** ORS 316.122 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 [(3)] (4).

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 [(2)] (3).

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 [(3)] (4).

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

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

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

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

32 (2) **Notwithstanding subsection (1) of this section, any gain that is treated as net capital**
33 **gain for federal tax purposes and that is included in taxable income in this state shall be**
34 **taxed at a rate equal to 0.5 multiplied by the rate applicable under subsection (1) of this**
35 **section.**

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

38 317.061. (1) The rate of the tax imposed by and computed under this chapter is:

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

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

42 (2) **Notwithstanding subsection (1) of this section, any gain that is treated as net capital**
43 **gain for federal tax purposes and that is included in taxable income in this state shall be**
44 **taxed at a rate equal to 0.5 multiplied by the rate applicable under subsection (1) of this**
45 **section.**

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

2 318.020. (1) There hereby is imposed upon every corporation for each taxable year a tax at the
3 rate provided in ORS 317.061 upon its Oregon taxable income derived from sources within this state,
4 other than income for which the corporation is subject to the tax imposed by ORS chapter 317 ac-
5 cording to or measured by its Oregon taxable income.

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

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

11 **SECTION 7.** ORS 316.045 is amended to read:

12 316.045. (1) As used in this section:

13 (a) "Farming" means:

14 (A) Raising, harvesting and selling crops;

15 (B) Feeding, breeding, managing or selling livestock, poultry, fur-bearing animals or honeybees
16 or the produce thereof;

17 (C) Dairying and selling dairy products;

18 (D) Stabling or training equines, including but not limited to providing riding lessons, training
19 clinics and schooling shows;

20 (E) Propagating, cultivating, maintaining or harvesting aquatic species and bird and animal
21 species to the extent allowed by the rules adopted by the State Fish and Wildlife Commission;

22 (F) On-site constructing and maintaining equipment and facilities used for the activities de-
23 scribed in this subsection;

24 (G) Preparing, storing or disposing of, by marketing or otherwise, the products or by-products
25 raised for human or animal use on land employed in activities described in this subsection; or

26 (H) Any other agricultural or horticultural activity or animal husbandry, or any combination
27 of these activities, except that "farming" does not include growing and harvesting trees of a
28 marketable species other than growing and harvesting cultured Christmas trees or certain hardwood
29 timber described in ORS 321.267 (3) or 321.824 (3).

30 (b) "Section 1231 gain" has the meaning given that term in section 1231 of the Internal Revenue
31 Code.

32 (2) Notwithstanding ORS 316.037, taxable income that consists of net long-term capital gain shall
33 be subject to tax under this chapter at a rate of five percent, **unless a lower rate applies under**
34 **ORS 316.037 (2)**, if all of the following conditions apply:

35 (a) The gain is:

36 (A) Derived from the sale or exchange of capital assets consisting of ownership interests in a
37 corporation, partnership or other entity in which, prior to the sale or exchange, the taxpayer owned
38 at least a 10 percent ownership interest; or

39 (B) Section 1231 gain.

40 (b) The property that was sold or exchanged consisted of:

41 (A) Ownership interests in a corporation, partnership or other entity that is engaged in the
42 trade or business of farming; or

43 (B) Property that is predominantly used in the trade or business of farming.

44 (c) The sale or exchange is to a person who is not related to the taxpayer under section 267 of
45 the Internal Revenue Code.

1 (d) The sale or exchange constitutes a substantially complete termination of all of the taxpayer's
2 ownership interests in a trade or business that is engaged in farming or a substantially complete
3 termination of all of the taxpayer's ownership interests in property that is employed in the trade
4 or business of farming. Ownership of a farm dwelling or farm homesite does not constitute owner-
5 ship of property employed in the trade or business of farming.

6 (3) If the taxpayer has net long-term capital gain derived in part from the sale or exchange of
7 property described in subsection (2)(b) of this section and in part from the sale or exchange of all
8 other property, the net long-term capital gain that is subject to tax under this section shall be de-
9 termined as follows:

10 (a) Compute the net long-term capital gain derived from all property described in subsection
11 (2)(b) of this section that was sold or exchanged during the tax year.

12 (b) Compute the net capital gain or loss from the sale or exchange of all other property during
13 the tax year.

14 (c) If the amount determined under paragraph (b) of this subsection is a net capital gain, the
15 gain that is subject to tax under subsection (2) of this section shall be the amount determined under
16 paragraph (a) of this subsection.

17 (d) If the amount determined under paragraph (b) of this subsection is a net capital loss, the gain
18 that is subject to tax under subsection (2) of this section shall be the amount determined under
19 paragraph (a) of this subsection minus the amount determined under paragraph (b) of this subsection.

20 **SECTION 8. (1) The amendments to ORS 316.037 and 316.045 by sections 1 and 7 of this**
21 **2011 Act apply to tax years beginning on or after January 1, 2011, and before January 1, 2012.**

22 **(2) The amendments to ORS 316.037 by section 2 of this 2011 Act apply to tax years be-**
23 **ginning on or after January 1, 2012.**

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

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

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

30 **SECTION 9. (1) ORS 317.063 does not apply to tax years beginning on or after January**
31 **1, 2011.**

32 **(2) ORS 316.045 does not apply to tax years beginning on or after January 1, 2012.**

33 **SECTION 10. This 2011 Act takes effect on the 91st day after the date on which the 2011**
34 **regular session of the Seventy-sixth Legislative Assembly adjourns sine die.**

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