LC 3616
2013 Regular Session
1/30/13 (CMT/ps)

D R A F T

SUMMARY

For purposes of personal income taxation, disallows use of itemized deductions and increases amount of standard deduction.

Applies to tax years beginning on or after January 1, 2013.

Takes effect on 91st day following adjournment sine die.

A BILL FOR AN ACT

Relating to income tax deductions; creating new provisions; amending ORS 316.117, 316.130 and 316.695; prescribing an effective date; and providing for revenue raising that requires approval by a three-fifths majority.

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

SECTION 1. ORS 316.695 is amended to read:

316.695. (1) In addition to the modifications to federal taxable income contained in this chapter, there shall be added to or subtracted from federal taxable income:

(a) If, in computing federal income tax for a taxable year, the taxpayer deducted itemized deductions, as defined in section 63(d) of the Internal Revenue Code, the taxpayer shall add the amount of itemized deductions deducted (the itemized deductions less an amount, if any, by which the itemized deductions are reduced under section 68 of the Internal Revenue Code).

(b) If, in computing federal income tax for a taxable year, the taxpayer deducted the standard deduction, as defined in section 63(c) of the Internal Revenue Code, the taxpayer shall add the amount of the standard deduction deducted.

(c)(A) From federal taxable income there shall be subtracted [*the larger* *of (i) the taxpayer's itemized deductions or (ii)*] a standard deduction. Except as provided in subsection (8) of this section, for purposes of this subparagraph, "standard deduction" means the sum of the basic standard deduction and the additional standard deduction.

(B) For purposes of subparagraph (A) of this paragraph, the basic standard deduction is:

(i) [*$3,280*] **$15,000**, in the case of joint return filers or a surviving spouse;

(ii) [*$1,640*] **$7,500**, in the case of an individual who is not a married individual and is not a surviving spouse;

(iii) [*$1,640*] **$7,500**, in the case of a married individual who files a separate return; or

(iv) [*$2,640*] **$12,000**, in the case of a head of household.

(C)(i) For purposes of subparagraph (A) of this paragraph for tax years beginning on or after January 1, [*2003*] **2015**, the Department of Revenue shall annually recompute the basic standard deduction for each category of return filer listed under subparagraph (B) of this paragraph. The basic standard deduction shall be computed by dividing the monthly averaged U.S. City Average Consumer Price Index for the 12 consecutive months ending August 31 of the prior calendar year by the average U.S. City Average Consumer Price Index for the second quarter of [*2002*] **2014**, then multiplying that quotient by the amount listed under subparagraph (B) of this paragraph for each category of return filer.

(ii) If any change in the maximum household income determined under this subparagraph is not a multiple of $5, the increase shall be rounded to the next lower multiple of $5.

(iii) As used in this subparagraph, "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.

(D) For purposes of subparagraph (A) of this paragraph, the additional standard deduction is the sum of each additional amount to which the taxpayer is entitled under subsection (7) of this section.

(E) As used in subparagraph (B) of this paragraph, "surviving spouse" and "head of household" have the meaning given those terms in section 2 of the Internal Revenue Code.

(F) In the case of the following, the standard deduction referred to in subparagraph (A) of this paragraph shall be zero:

[*(i) A husband or wife filing a separate return where the other spouse has claimed itemized deductions under subparagraph (A) of this paragraph;*]

[*(ii)*] **(i)** A nonresident alien individual;

[*(iii)*] **(ii)** An individual making a return for a period of less than 12 months on account of a change in the individual's annual accounting period;

[*(iv)*] **(iii)** An estate or trust;

[*(v)*] **(iv)** A common trust fund; or

[*(vi)*] **(v)** A partnership.

[*(d) For the purposes of paragraph (c)(A) of this subsection, the taxpayer's itemized deductions are the sum of:*]

[*(A) The taxpayer's itemized deductions as defined in section 63(d) of the Internal Revenue Code (reduced, if applicable, as described under section 68 of the Internal Revenue Code) minus the deduction for Oregon income tax (reduced, if applicable, by the proportion that the reduction in federal itemized deductions resulting from section 68 of the Internal Revenue Code bears to the amount of federal itemized deductions as defined for purposes of section 68 of the Internal Revenue Code); and*]

[*(B) The amount that may be taken into account under section 213(a) of the Internal Revenue Code, not to exceed seven and one-half percent of the federal adjusted gross income of the taxpayer, if the taxpayer has attained the following age before the close of the taxable year, or, in the case of a joint return, if either taxpayer has attained the following age before the close of the taxable year:*]

[*(i) For taxable years beginning on or after January 1, 1991, and before January 1, 1993, a taxpayer must attain 58 years of age before the close of the* *taxable year.*]

[*(ii) For taxable years beginning on or after January 1, 1993, and before January 1, 1995, a taxpayer must attain 59 years of age before the close of the taxable year.*]

[*(iii) For taxable years beginning on or after January 1, 1995, and before January 1, 1997, a taxpayer must attain 60 years of age before the close of the taxable year.*]

[*(iv) For taxable years beginning on or after January 1, 1997, and before January 1, 1999, a taxpayer must attain 61 years of age before the close of the taxable year.*]

[*(v) For taxable years beginning on or after January 1, 1999, a taxpayer must attain 62 years of age before the close of the taxable year.*]

(2)(a) There shall be subtracted from federal taxable income any portion of the distribution of a pension, profit-sharing, stock bonus or other retirement plan, representing that portion of contributions which were taxed by the State of Oregon but not taxed by the federal government under laws in effect for tax years beginning prior to January 1, 1969, or for any subsequent year in which the amount that was contributed to the plan under the Internal Revenue Code was greater than the amount allowed under this chapter.

(b) Interest or other earnings on any excess contributions of a pension, profit-sharing, stock bonus or other retirement plan not permitted to be deducted under paragraph (a) of this subsection [*shall*] **may** not be added to federal taxable income in the year earned by the plan and [*shall*] **may** not be subtracted from federal taxable income in the year received by the taxpayer.

(3)(a) Except as provided in subsection (4) of this section, there shall be added to federal taxable income the amount of any federal income taxes in excess of the amount provided in paragraphs (b) to (d) of this subsection, accrued by the taxpayer during the taxable year as described in ORS 316.685, less the amount of any refund of federal taxes previously accrued for which a tax benefit was received.

(b) The limits applicable to this subsection are:

(A) $5,500, if the federal adjusted gross income of the taxpayer for the tax year is less than $125,000, or, if reported on a joint return, less than $250,000.

(B) $4,400, if the federal adjusted gross income of the taxpayer for the tax year is $125,000 or more and less than $130,000, or, if reported on a joint return, $250,000 or more and less than $260,000.

(C) $3,300, if the federal adjusted gross income of the taxpayer for the tax year is $130,000 or more and less than $135,000, or, if reported on a joint return, $260,000 or more and less than $270,000.

(D) $2,200, if the federal adjusted gross income of the taxpayer for the tax year is $135,000 or more and less than $140,000, or, if reported on a joint return, $270,000 or more and less than $280,000.

(E) $1,100, if the federal adjusted gross income of the taxpayer for the tax year is $140,000 or more and less than $145,000, or, if reported on a joint return, $280,000 or more and less than $290,000.

(c) If the federal adjusted gross income of the taxpayer is $145,000 or more for the tax year, or, if reported on a joint return, $290,000 or more, the limit is zero and the taxpayer is not allowed a subtraction for federal income taxes under ORS 316.680 (1) for the tax year.

(d) In the case of a husband and wife filing separate tax returns, the amount added shall be in the amount of any federal income taxes in excess of the amount provided for individual taxpayers under paragraphs (a) to (c) of this subsection, less the amount of any refund of federal taxes previously accrued for which a tax benefit was received.

(e) For purposes of this subsection, the limits applicable to a joint return shall apply to a head of household or a surviving spouse, as defined in section 2(a) and (b) of the Internal Revenue Code.

(f)(A) For a calendar year beginning on or after January 1, 2008, the Department of Revenue shall make a cost-of-living adjustment to the federal income tax threshold amounts described in paragraphs (b) and (d) of this subsection.

(B) The cost-of-living adjustment for a calendar year is the percentage 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 period beginning September 1, 2005, and ending August 31, 2006.

(C) As used in this paragraph, "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.

(D) If any adjustment determined under subparagraph (B) of this paragraph is not a multiple of $50, the adjustment shall be rounded to the next lower multiple of $50.

(E) The adjustment shall apply to all tax years beginning in the calendar year for which the adjustment is made.

(4)(a) In addition to the adjustments required by ORS 316.130, a full-year nonresident individual shall add to taxable income a proportion of any accrued federal income taxes as computed under ORS 316.685 in excess of the amount provided in subsection (3) of this section in the proportion provided in ORS 316.117.

(b) In the case of a husband and wife filing separate tax returns, the amount added under this subsection shall be computed in a manner consistent with the computation of the amount to be added in the case of a husband and wife filing separate returns under subsection (3) of this section. The method of computation shall be determined by the Department of Revenue by rule.

(5) Subsections (3)(d) and (4)(b) of this section [*shall*] **may** not apply to married individuals living apart as defined in section 7703(b) of the Internal Revenue Code.

(6)(a) For tax years beginning on or after January 1, 1981, and prior to January 1, 1983, income or loss taken into account in determining federal taxable income by a shareholder of an S corporation pursuant to sections

1373 to 1375 of the Internal Revenue Code shall be adjusted for purposes of determining Oregon taxable income, to the extent that as income or loss of the S corporation, they were required to be adjusted under the provisions of ORS chapter 317.

(b) For tax years beginning on or after January 1, 1983, items of income, loss or deduction taken into account in determining federal taxable income by a shareholder of an S corporation pursuant to sections 1366 to 1368 of the Internal Revenue Code shall be adjusted for purposes of determining Oregon taxable income, to the extent that as items of income, loss or deduction of the shareholder the items are required to be adjusted under the provisions of this chapter.

(c) The tax years referred to in paragraphs (a) and (b) of this subsection are those of the S corporation.

(d) As used in paragraph (a) of this subsection, an S corporation refers to an electing small business corporation.

(7)(a) The taxpayer shall be entitled to an additional amount, as referred to in subsection (1)(c)(A) and (D) of this section, of $1,000:

(A) For the taxpayer if the taxpayer has attained age 65 before the close of the taxpayer's taxable year; and

(B) For the spouse of the taxpayer if the spouse has attained age 65 before the close of the taxable year and an additional exemption is allowable to the taxpayer for such spouse for federal income tax purposes under section 151(b) of the Internal Revenue Code.

(b) The taxpayer shall be entitled to an additional amount, as referred to in subsection (1)(c)(A) and (D) of this section, of $1,000:

(A) For the taxpayer if the taxpayer is blind at the close of the taxable year; and

(B) For the spouse of the taxpayer if the spouse is blind as of the close of the taxable year and an additional exemption is allowable to the taxpayer for such spouse for federal income tax purposes under section 151(b) of the Internal Revenue Code. For purposes of this subparagraph, if the spouse dies during the taxable year, the determination of whether such spouse is blind shall be made immediately prior to death.

(c) In the case of an individual who is not married and is not a surviving spouse, paragraphs (a) and (b) of this subsection shall be applied by substituting “$1,200” for “$1,000.”

(d) For purposes of this subsection, an individual is blind only if the individual’s central visual acuity does not exceed 20/200 in the better eye with correcting lenses, or if the individual’s visual acuity is greater than 20/200 but is accompanied by a limitation in the fields of vision such that the widest diameter of the visual field subtends an angle no greater than 20 degrees.

(8) In the case of an individual with respect to whom a deduction under section 151 of the Internal Revenue Code is allowable for federal income tax purposes to another taxpayer for a taxable year beginning in the calendar year in which the individual’s taxable year begins, the basic standard deduction (referred to in subsection (1)(c)(B) of this section) applicable to such individual for such individual’s taxable year shall equal the lesser of:

(a) The amount allowed to the individual under section 63(c)(5) of the Internal Revenue Code for federal income tax purposes for the tax year for which the deduction is being claimed; or

(b) The amount determined under subsection (1)(c)(B) of this section.

SECTION 2. ORS 316.117 is amended to read:

316.117. (1) Except as provided under subsection (2) of this section, the proportion for making a proration for nonresident taxpayers of the standard deduction [*or itemized deductions*], the personal exemption credits and any accrued federal or foreign income taxes, or for part-year resident taxpayers of the amount of the tax, between Oregon source income and income from all other sources is the federal adjusted gross income of the taxpayer from Oregon sources divided by the taxpayer’s federal adjusted gross income from all sources. If the numerator of the fraction described in this subsection is greater than the denominator, the proportion of 100 percent shall be used in the proration required by this section. As used in this subsection, "federal adjusted gross income" means the federal adjusted gross income of the taxpayer with the additions, subtractions and other modifications to federal taxable income that relate to adjusted gross income for personal income tax purposes.

(2) For part-year resident trusts, the proration made under this section shall be made by reference to the taxable income of the fiduciary.

SECTION 3. ORS 316.130 is amended to read:

316.130. (1) The taxable income for a full-year nonresident individual is adjusted gross income attributable to sources within this state determined under ORS 316.127, with the modifications (except those provided under subsection (2) of this section) as otherwise provided under this chapter and other laws of this state applicable to personal income taxation, less the deductions allowed under subsection (2) of this section.

(2)(a) A full-year nonresident individual shall be allowed the deduction for a standard deduction [*or itemized deductions*] allowable to a resident under ORS 316.695 (1) in the proportion provided in ORS 316.117.

(b) A full-year nonresident individual shall be allowed to deduct the amount of any accrued federal income taxes and foreign country income taxes as provided in ORS 316.690 in the proportion provided in ORS 316.117.

(c)(A) A full-year nonresident individual shall be allowed to deduct the amount of any alimony or separate maintenance payments paid during such individual's taxable year in the proportion provided in ORS 316.117 except that in determining the proportion the taxpayer's adjusted gross income shall not include a deduction for alimony. For purposes of this paragraph, "alimony or separate maintenance payment" has the meaning given the phrase in section 215 of the Internal Revenue Code.

(B) No deduction shall be allowed under this paragraph if the alimony or separate maintenance payment is not includable in the gross income of the nonresident individual for federal income tax purposes under section 682 of the Internal Revenue Code.

(3)(a) A full-year nonresident who is a self-employed individual shall be allowed to deduct that individual's contributions to a qualified plan, deductible on that individual's federal income tax return pursuant to section 401 of the Internal Revenue Code, in the proportion that the individual's earned income from Oregon sources bears to the individual's earned income from all sources. "Earned income" has the meaning given in section 401(c)(2) of the Internal Revenue Code. If the numerator of the fraction described in this paragraph is greater than the denominator, the proration of 100 percent shall be used.

(b) A full-year nonresident shall be allowed to deduct that individual's qualified retirement contributions, deductible on that individual's federal income tax return pursuant to section 219 of the Internal Revenue Code, in the proportion that the individual's compensation from Oregon sources bears to the individual's compensation from all sources. "Compensation" has the meaning given in section 219(f)(1) of the Internal Revenue Code.

(c) A full-year nonresident individual shall be allowed to deduct the aggregate amounts paid in cash to a medical savings account, deductible on the individual's federal income tax return pursuant to section 220 of the Internal Revenue Code, in the proportion that the individual's compensation from Oregon sources bears to the individual's compensation from all sources. Distributions from a medical savings account, if excluded from income for federal income tax purposes, shall be excluded for Oregon income tax purposes. Distributions from a medical savings account, if included in income for federal tax purposes, shall be included in income for Oregon tax purposes to the extent that an exclusion has been allowed for contributions to the medical savings account for Oregon tax purposes in a previous year.

SECTION 4. The amendments to ORS 316.117, 316.130 and 316.695 by sections 1 to 3 of this 2013 Act apply to tax years beginning on or after January 1, 2013.

SECTION 5. This 2013 Act takes effect on the 91st day after the date on which the 2013 regular session of the Seventy-seventh Legislative

Assembly adjourns sine die.
