

# House Bill 4004

Introduced and printed pursuant to House Rule 12.00. Presession filed (at the request of House Interim Committee on Revenue)

## 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**.

Makes corrections to provisions related to income tax subtraction for senior medical expenses, tax treatment of domestic international sales corporations and distribution of proceeds from cigarette tax. Modifies conditions for optional reduced rates of personal income tax on nonpassive income attributable to partnership or S corporation to align material participation requirement with federal provision. States that provision allowing Department of Revenue to waive penalty or interest on underpayment or underreporting of taxes attributable to retroactive application of legislation applies to immediate tax year.

Takes effect on 91st day following adjournment sine die.

## A BILL FOR AN ACT

1  
2 Relating to taxation; creating new provisions; amending ORS 316.043, 316.693, 317.283 and 323.455;  
3 and prescribing an effective date.

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

5 **SECTION 1.** ORS 316.693 is amended to read:

6 316.693. (1)(a) In addition to the other modifications to federal taxable income contained in this  
7 chapter, there shall be subtracted from federal taxable income the amount paid for medical care of  
8 an individual and not compensated for by insurance or otherwise, as described in section [213(a)]  
9 **213** of the Internal Revenue Code, if the individual meets the age requirement for the tax year under  
10 subsection (2) of this section. The amount subtracted under this section may not exceed:

11 (A) \$3,600 for a joint return if both spouses meet the age requirement for the tax year under  
12 subsection (2) of this section, with no more than \$1,800 attributable to the medical care of either  
13 spouse;

14 (B) \$1,800 for a joint return if only one spouse meets the age requirement for the tax year under  
15 subsection (2) of this section, with no more than \$1,800 attributable to the medical care of that  
16 spouse; or

17 (C) \$1,800 for each individual filing a return who meets the age requirement for the tax year  
18 under subsection (2) of this section, with no more than \$1,800 attributable to the medical care of  
19 that individual.

20 (b) The subtraction under this section may not include amounts that have previously been de-  
21 ducted in the calculation of Oregon taxable income.

22 (2) The subtraction under this section is available only if the individual has attained the fol-  
23 lowing age before the close of the tax year:

24 (a) For tax years beginning on or after January 1, 2013, and before January 1, 2014, an indi-  
25 vidual must attain 62 years of age before the close of the tax year.

26 (b) For tax years beginning on or after January 1, 2014, and before January 1, 2016, an indi-  
27 vidual must attain 63 years of age before the close of the tax year.

**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 (c) For tax years beginning on or after January 1, 2016, and before January 1, 2018, an individ-  
 2 ual must attain 64 years of age before the close of the tax year.

3 (d) For tax years beginning on or after January 1, 2018, and before January 1, 2020, an indi-  
 4 vidual must attain 65 years of age before the close of the tax year.

5 (e) For tax years beginning on or after January 1, 2020, an individual must attain 66 years of  
 6 age before the close of the tax year.

7 (3) Notwithstanding the amount calculated under subsection (1) of this section, the maximum  
 8 amount allowed for a subtraction under this section may not exceed:

9 (a) \$1,400 per individual, if the federal adjusted gross income of the taxpayer for the tax year  
 10 is \$50,000 or more and less than \$100,000 for a taxpayer who files a return jointly, as a head of  
 11 household or as a surviving spouse, or for all other taxpayers, \$25,000 or more and less than \$50,000.

12 (b) \$1,000 per individual, if the federal adjusted gross income of the taxpayer for the tax year  
 13 is \$100,000 or more [*and less than*] **but does not exceed** \$200,000 for a taxpayer who files a return  
 14 jointly, as a head of household or as a surviving spouse, or for all other taxpayers, \$50,000 or more  
 15 [*and less than*] **but does not exceed** \$100,000.

16 (4) A subtraction may not be claimed under this section if the federal adjusted gross income of  
 17 the taxpayer for the tax year exceeds:

18 (a) \$200,000 for joint return filers, a surviving spouse or a head of household; or

19 (b) \$100,000 for an individual who is not a married individual and is not a surviving spouse, or  
 20 is a married individual who files a separate return.

21 **SECTION 2.** ORS 317.283 is amended to read:

22 317.283. (1) To derive Oregon taxable income, federal taxable income shall be modified to the  
 23 extent necessary to not recognize for Oregon tax purposes any transaction between the taxpayer  
 24 and a related domestic international sales corporation. The taxpayer shall be considered to have  
 25 entered directly into any transactions with third parties that are treated for federal income tax  
 26 purposes as having been entered into by a related domestic international sales corporation. To sat-  
 27 isfy the requirements of this section:

28 (a) No deduction shall be allowed to any taxpayer for any payment to a related domestic inter-  
 29 national sales corporation;

30 (b) No income or expense that would be attributed to a taxpayer but for the provisions of  
 31 sections 991 to 996 of the Internal Revenue Code shall be treated as attributable to a related do-  
 32 mestic international sales corporation; and

33 (c) No deduction shall be allowed to a taxpayer for interest on DISC-related deferred tax li-  
 34 ability paid pursuant to section 995(f) of the Internal Revenue Code.

35 (2) Notwithstanding subsection (1) of this section, **if a domestic international sales corpo-**  
 36 **ration is formed on or before January 1, 2014:**

37 (a) A tax shall be imposed under this chapter at a rate of 2.5 percent on any commission re-  
 38 ceived by [*a*] **the** domestic international sales corporation; and

39 (b) A deduction shall be allowed for commission payments to [*a*] **the** domestic international sales  
 40 corporation[, *if the domestic international sales corporation is formed on or before January 1, 2014*].

41 (3) As used in this section, “domestic international sales corporation” means a domestic inter-  
 42 national sales corporation as defined in section 992 of the Internal Revenue Code.

43 **SECTION 3.** ORS 323.455 is amended to read:

44 323.455. (1) All moneys received by the Department of Revenue from the tax imposed by ORS  
 45 323.030 (1) shall be paid over to the State Treasurer to be held in a suspense account established

1 under ORS 293.445. The department may pay expenses for administration and enforcement of ORS  
 2 323.005 to 323.482 out of moneys received from the tax imposed under ORS 323.030 (1). Amounts  
 3 necessary to pay administrative and enforcement expenses are continuously appropriated to the de-  
 4 partment from the suspense account. After the payment of administrative and enforcement expenses  
 5 and refunds, 89.65 percent shall be credited to the General Fund, 3.45 percent is appropriated to the  
 6 cities of this state, 3.45 percent is appropriated to the counties of this state and 3.45 percent is  
 7 continuously appropriated to the Department of Transportation for the purpose of financing and  
 8 improving transportation services for elderly individuals and individuals with disabilities as provided  
 9 in ORS 391.800 to 391.830.

10 (2) The moneys appropriated to cities and counties under subsection (1) of this section shall be  
 11 paid on a monthly basis within 35 days after the end of the month for which a distribution is made.  
 12 Each city shall receive such share of the money appropriated to all cities as its population, as de-  
 13 termined under ORS 190.510 to 190.590 last preceding such apportionment, bears to the total popu-  
 14 lation of the cities of the state, and each county shall receive such share of the money as its  
 15 population, determined under ORS 190.510 to 190.590 last preceding such apportionment, bears to the  
 16 total population of the state.

17 (3) The moneys appropriated to the Department of Transportation under subsection (1) of this  
 18 section shall be distributed and transferred to the Elderly and Disabled Special Transportation Fund  
 19 established by ORS 391.800 at the same time as the cigarette tax moneys are distributed to cities  
 20 and counties under this section.

21 (4) Of the moneys credited to the General Fund under [subsection (1)] **subsections (1) and (5)(b)**  
 22 of this section, 51.92 percent shall be dedicated to funding the maintenance and expansion of the  
 23 number of persons eligible for the medical assistance program under ORS chapter 414, or to funding  
 24 the maintenance of the benefits available under the program, or both, and 5.77 percent shall be  
 25 credited to the Tobacco Use Reduction Account established under ORS 431.832.

26 (5) All moneys received by the Department of Revenue from the tax imposed by ORS 323.030 (4)  
 27 shall be paid over to the State Treasurer to be held in a suspense account established under ORS  
 28 293.445. After the payment of refunds, the balance shall be credited as follows:

29 (a) 76.92 percent to the Oregon Health Authority Fund established by ORS 413.101, for the  
 30 purpose of providing the services described in ORS 430.630.

31 (b) 23.08 percent [*according to the distribution formula provided in subsection (4) of this section*]  
 32 **to the General Fund.**

33 **SECTION 4.** ORS 316.043 is amended to read:

34 316.043. (1) As used in this section:

35 (a) "Nonpassive income" means income other than income from passive activity as determined  
 36 under section 469 of the Internal Revenue Code. "Nonpassive income" does not include wages, in-  
 37 terest, dividends or capital gains.

38 (b) "Nonpassive loss" means loss other than loss from passive activity as determined under  
 39 section 469 of the Internal Revenue Code.

40 (2) If a taxpayer that meets the conditions of subsection (6) of this section has nonpassive in-  
 41 come attributable to any partnership or S corporation after reduction for nonpassive losses, that  
 42 portion of the taxpayer's income that meets the conditions of subsection (6) of this section shall be  
 43 taxed at a rate of:

44 (a)(A) Seven percent of the first \$250,000 of taxable income, or fraction thereof;

45 (B) Seven and two-tenths percent of taxable income exceeding \$250,000 but not exceeding

1 \$500,000;

2 (C) Seven and six-tenths percent of taxable income exceeding \$500,000 but not exceeding \$1  
3 million;

4 (D) Eight percent of taxable income exceeding \$1 million but not exceeding \$2.5 million;

5 (E) Nine percent of taxable income exceeding \$2.5 million but not exceeding \$5 million; and

6 (F) Nine and nine-tenths percent of taxable income exceeding \$5 million; or

7 (b) At the election of the taxpayer, the rate otherwise applicable under ORS 316.037.

8 (3) The reduced rates allowed under subsection (2) of this section may be adjusted as provided  
9 in ORS 316.044.

10 (4) A taxpayer shall use the subtractions, deductions or additions otherwise allowed under this  
11 chapter in the calculation of income that is taxed at the rates otherwise applicable under ORS  
12 316.037. The only addition or subtraction allowed in the calculation of nonpassive income for which  
13 the taxpayer uses the reduced rates allowed under subsection (2) of this section shall be any de-  
14 preciation adjustment directly related to the partnership or S corporation.

15 (5) The election under subsection (2)(b) of this section shall be irrevocable and shall be made  
16 on the taxpayer's original return. If the taxpayer uses the reduced rates allowed under subsection  
17 (2) of this section, the calculation of income shall be substantiated on a form prescribed by the De-  
18 partment of Revenue and filed with the taxpayer's tax return for the tax year or at such other time  
19 and manner as the department may prescribe by rule. A taxpayer who uses the reduced rates  
20 available under subsection (2) of this section may not join in the filing of a composite return under  
21 ORS 314.778.

22 (6) The rates listed in subsection (2) of this section apply to nonpassive income attributable to  
23 a partnership or S corporation only if:

24 (a) The taxpayer materially participates in [*the day-to-day operations of*] the trade or business;

25 (b) The partnership or S corporation employs at least one person who is not an owner, member  
26 or limited partner of the partnership or S corporation; and

27 (c) At least 1,200 aggregate hours of work in Oregon are performed, by the close of the tax year  
28 for which the reduced rate is allowed, by employees who meet the requirements of paragraph (b) of  
29 this subsection and who are employed by the partnership or S corporation. In determining whether  
30 this requirement is met, only hours worked in a week in which a worker works at least 30 hours  
31 may be considered.

32 (7)(a) A nonresident may apply the reduced rates allowed under subsection (2) of this section  
33 only to income earned in Oregon.

34 (b) A part-year resident shall calculate the tax due using the reduced rates allowed under sub-  
35 section (2) of this section by first applying those rates to the taxpayer's nonpassive income that  
36 meets the requirements of subsection (6) of this section, and then multiplying that amount by the  
37 ratio of the taxpayer's nonpassive income in Oregon divided by nonpassive income from all sources.

38 **SECTION 5. Section 24, chapter 5, Oregon Laws 2013 (special session), applies to tax**  
39 **years beginning on or after January 1, 2013, and before January 1, 2014.**

40 **SECTION 6. This 2014 Act takes effect on the 91st day after the date on which the 2014**  
41 **regular session of the Seventy-seventh Legislative Assembly adjourns sine die.**

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