

# House Bill 2076

Introduced and printed pursuant to House Rule 12.00. Pre-session 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**.

Provides that corporate minimum tax may not be reduced, paid or otherwise satisfied by use of tax credits. Modifies provisions allowing for optional reduced rates of personal income tax on non-passive income attributable to partnership or S corporation by limiting amount of income for which reduced rate may be claimed and by decreasing number of annual hours of work required for employee of entity. Requires, for Oregon corporate excise or income tax purposes, addition to federal taxable income of amount of employee compensation over prescribed limit. Raises rates of personal income and corporate excise or income tax.

Applies to tax years beginning on or after January 1, 2016.

Takes effect on 91st day following adjournment sine die.

## A BILL FOR AN ACT

1  
2 Relating to taxation; creating new provisions; amending ORS 316.037, 316.043, 317.061 and 317.090;  
3 prescribing an effective date; and providing for revenue raising that requires approval by a  
4 three-fifths majority.

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

6 **SECTION 1.** ORS 317.090 is amended to read:

7 317.090. (1) As used in this section:

8 (a) "Oregon sales" means:

9 (A) If the corporation apportions business income under ORS 314.650 to 314.665 for Oregon tax  
10 purposes, the total sales of the taxpayer in this state during the tax year, as determined for purposes  
11 of ORS 314.665;

12 (B) If the corporation does not apportion business income for Oregon tax purposes, the total  
13 sales in this state that the taxpayer would have had, as determined for purposes of ORS 314.665, if  
14 the taxpayer were required to apportion business income for Oregon tax purposes; or

15 (C) If the corporation apportions business income using a method different from the method  
16 prescribed by ORS 314.650 to 314.665, Oregon sales as defined by the Department of Revenue by  
17 rule.

18 (b) If the corporation is an agricultural cooperative that is a cooperative organization described  
19 in section 1381 of the Internal Revenue Code, "Oregon sales" does not include sales representing  
20 business done with or for members of the agricultural cooperative.

21 (2) Each corporation or affiliated group of corporations filing a return under ORS 317.710 shall  
22 pay annually to the state, for the privilege of carrying on or doing business by it within this state,  
23 a minimum tax as follows:

24 (a) If Oregon sales properly reported on a return are:

25 (A) Less than \$500,000, the minimum tax is \$150.

26 (B) \$500,000 or more, but less than \$1 million, the minimum tax is \$500.

27 (C) \$1 million or more, but less than \$2 million, the minimum tax is \$1,000.

**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 (D) \$2 million or more, but less than \$3 million, the minimum tax is \$1,500.

2 (E) \$3 million or more, but less than \$5 million, the minimum tax is \$2,000.

3 (F) \$5 million or more, but less than \$7 million, the minimum tax is \$4,000.

4 (G) \$7 million or more, but less than \$10 million, the minimum tax is \$7,500.

5 (H) \$10 million or more, but less than \$25 million, the minimum tax is \$15,000.

6 (I) \$25 million or more, but less than \$50 million, the minimum tax is \$30,000.

7 (J) \$50 million or more, but less than \$75 million, the minimum tax is \$50,000.

8 (K) \$75 million or more, but less than \$100 million, the minimum tax is \$75,000.

9 (L) \$100 million or more, the minimum tax is \$100,000.

10 (b) If a corporation is an S corporation, the minimum tax is \$150.

11 (3) The minimum tax is not apportionable (except in the case of a change of accounting periods),  
 12 [and] is payable in full for any part of the year during which a corporation is subject to tax, **and**  
 13 **may not be reduced, paid or otherwise satisfied through the use of any tax credit.**

14 **SECTION 2.** ORS 316.043, as amended by section 6, chapter 114, Oregon Laws 2014, is amended  
 15 to read:

16 316.043. (1) As used in this section:

17 (a) "Material participation" has the meaning given that term in section 469 of the Internal Re-  
 18 venue Code.

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

22 (c) "Nonpassive loss" means loss other than loss from passive activity as determined under  
 23 section 469 of the Internal Revenue Code.

24 (2) If a taxpayer that meets the conditions of subsection (6) of this section has nonpassive in-  
 25 come attributable to any partnership or S corporation after reduction for nonpassive losses, that  
 26 portion of the taxpayer's income, **not to exceed \$1 million**, that meets the conditions of subsection  
 27 (6) of this section shall be taxed at:

28 (a) The rate applicable under ORS 316.037; or

29 (b) At the election of the taxpayer, a rate of:

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

31 (B) Seven and two-tenths percent of taxable income exceeding \$250,000 but not exceeding  
 32 \$500,000; **and**

33 (C) Seven and six-tenths percent of taxable income exceeding \$500,000 but not exceeding \$1  
 34 million[;].

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

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

37 [(F) Nine and nine-tenths percent of taxable income exceeding \$5 million.]

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

40 (4) A taxpayer shall use the subtractions, deductions or additions otherwise allowed under this  
 41 chapter in the calculation of income that is taxed at the rates otherwise applicable under ORS  
 42 316.037. The only addition or subtraction allowed in the calculation of nonpassive income for which  
 43 the taxpayer uses the reduced rates allowed under subsection (2)(b) of this section shall be any de-  
 44 preciation adjustment directly related to the partnership or S corporation.

45 (5) The election under subsection (2)(b) of this section shall be irrevocable and shall be made

1 on the taxpayer's original return. If the taxpayer uses the reduced rates allowed under subsection  
 2 (2)(b) of this section, the calculation of income shall be substantiated on a form prescribed by the  
 3 Department of Revenue and filed with the taxpayer's tax return for the tax year or at such other  
 4 time and manner as the department may prescribe by rule. A taxpayer who uses the reduced rates  
 5 available under subsection (2)(b) of this section may not join in the filing of a composite return un-  
 6 der ORS 314.778.

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

9 (a) The taxpayer materially participates in the trade or business;

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

12 (c) At least [~~1,200~~] **1,000** aggregate hours of work in Oregon are performed, by the close of the  
 13 tax year for which the reduced rate is allowed, by employees who meet the requirements of para-  
 14 graph (b) of this subsection and who are employed by the partnership or S corporation. In deter-  
 15 mining whether this requirement is met, only hours worked in a week in which a worker works at  
 16 least [~~30~~] **20** hours may be considered.

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

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

23 **SECTION 3.** ORS 316.037 is amended to read:

24 316.037. (1)(a) A tax is imposed for each taxable year on the entire taxable income of every  
 25 resident of this state. The amount of the tax shall be determined in accordance with the following  
 26 table:

---

29 If taxable income is:	The tax is:
30 31 Not over \$2,000	32 5% of 33 taxable 34 income
35 Over \$2,000 but not 36 over \$5,000	37 \$100 plus 7% 38 of the excess 39 over \$2,000
40 Over \$5,000 but not 41 over \$125,000	42 \$310 plus 9% 43 of the excess 44 over \$5,000
45 [ <i>Over \$125,000</i> ]	<i>\$11,110 plus 9.9%</i>

1	<b>Over \$125,000 but not</b>	
2	<b>over \$250,000</b>	<b>\$11,110 plus 10.8%</b>
3		of the excess
4		over \$125,000
5	<b>Over \$250,000</b>	<b>\$24,610 plus 11%</b>
6		<b>of the excess</b>
7		<b>over \$250,000</b>

---

(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]* **may** 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, the increase shall be rounded to the next lower multiple of \$50.

(2) A tax is imposed for each taxable year upon the entire taxable income of every part-year resident of this state. The amount of the tax shall be computed under subsection (1) of this section as if the part-year resident were a full-year resident and shall be multiplied by the ratio provided under ORS 316.117 to determine the tax on income derived from sources within this state.

(3) A tax is imposed for each taxable year on the taxable income of every full-year nonresident that is derived from sources within this state. The amount of the tax shall be determined in accordance with the table set forth in subsection (1) of this section.

**SECTION 4.** ORS 317.061 is amended to read:

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

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

(2) Seven and [*six-tenths*] **nine-tenths** percent of any amount of taxable income in excess of [*\$1 million*] **\$250,000**.

**SECTION 5.** Section 6 of this 2015 Act is added to and made a part of ORS chapter 317.

**SECTION 6.** (1) As used in this section, "compensation" includes wages, salaries, bonuses, commissions, stock options or any other remuneration paid to or accrued by an individual in return for services.

1           **(2) If the compensation of any employee of the taxpayer exceeds \$250,000 for the tax year,**  
2 **there shall be added to federal taxable income the aggregate amount by which each**  
3 **employee’s compensation exceeds \$250,000, if that amount has been deducted on the**  
4 **taxpayer’s federal return.**

5           **SECTION 7. Section 8 of this 2015 Act is added to and made a part of ORS chapter 318.**

6           **SECTION 8. (1) As used in this section, “compensation” includes wages, salaries, bo-**  
7 **nuses, commissions, stock options or any other remuneration paid to or accrued by an indi-**  
8 **vidual in return for services.**

9           **(2) If the compensation of any employee of the taxpayer exceeds \$250,000 in the tax year,**  
10 **there shall be added to federal taxable income the aggregate amount by which each**  
11 **employee’s compensation exceeds \$250,000, if that amount has been deducted on the**  
12 **taxpayer’s federal return.**

13           **SECTION 9. Sections 6 and 8 of this 2015 Act and the amendments to ORS 316.037,**  
14 **316.043, 317.061 and 317.090 by sections 1 to 4 of this 2015 Act apply to tax years beginning**  
15 **on or after January 1, 2016.**

16           **SECTION 10. This 2015 Act takes effect on the 91st day after the date on which the 2015**  
17 **regular session of the Seventy-eighth Legislative Assembly adjourns sine die.**

18