

House Bill 2097

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**.

Modifies conditions for optional reduced rates of personal income tax on nonpassive income attributable to partnership or S corporation by aligning with federal provision that allows for elective grouping of related entities that form economic unit. Provides that reduced rates do not apply to income reported by spouses engaged in qualified joint venture or to gain recognized on sale or exchange of property used in trade or business. Restricts use of reduced rates to Oregon-sourced income.

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 reduced rates of taxation on pass-through income; creating new provisions; amending
3 ORS 316.043; and prescribing an effective date.

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

5 **SECTION 1.** ORS 316.043, as amended by section 6, chapter 114, Oregon Laws 2014, is amended
6 to read:

7 316.043. (1) As used in this section:

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

10 (b) "Nonpassive income" means income **from Oregon sources**, other than income from passive
11 activity as determined under section 469 of the Internal Revenue Code. "Nonpassive income" does
12 not include wages, interest, dividends or capital gains.

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

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

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

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

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

22 (B) Seven and two-tenths percent of taxable income exceeding \$250,000 but not exceeding
23 \$500,000;

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

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

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

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

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

4 (4) A taxpayer shall use the subtractions, deductions or additions otherwise allowed under this
5 chapter in the calculation of income that is taxed at the rates otherwise applicable under ORS
6 316.037. The only addition or subtraction allowed in the calculation of nonpassive income for which
7 the taxpayer uses the reduced rates allowed under subsection (2)(b) of this section shall be any de-
8preciation adjustment directly related to the partnership or S corporation.

9 (5) The election under subsection (2)(b) of this section shall be irrevocable and shall be made
10 on the taxpayer's original return. If the taxpayer uses the reduced rates allowed under subsection
11 (2)(b) of this section, the calculation of income shall be substantiated on a form prescribed by the
12 Department of Revenue and filed with the taxpayer's tax return for the tax year or at such other
13 time and manner as the department may prescribe by rule. A taxpayer who uses the reduced rates
14 available under subsection (2)(b) of this section may not join in the filing of a composite return un-
15der ORS 314.778.

16 (6) The rates listed in subsection (2)(b) of this section apply to nonpassive income **or income**
17 **resulting from a grouping election, as described in subsection (7) of this section, that is at-**
18 **tributable to a partnership or S corporation only if:**

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

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

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

27 **(7) The rates listed in subsection (2)(b) of this section may be applied to income or loss**
28 **attributable to a single activity where the taxpayer has elected to group related business**
29 **entities that form an interrelated, integrated economic unit, as provided by section 469 of the**
30 **Internal Revenue Code.**

31 **(8) The rates listed in subsection (2)(b) of this section may not be applied to:**

32 **(a) Income or loss of a qualified joint venture, as that term is defined in section 761(f)(2)**
33 **of the Internal Revenue Code; or**

34 **(b) Section 1231 gain, as defined in section 1231 of the Internal Revenue Code.**

35 [(7)(a)] **(9)(a)** A nonresident may apply the reduced rates allowed under subsection (2)(b) of this
36 section only to income earned in Oregon.

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

41 **SECTION 2. The amendments to ORS 316.043 by section 1 of this 2015 Act apply to tax**
42 **years beginning on or after January 1, 2016.**

43 **SECTION 3. This 2015 Act takes effect on the 91st day after the date on which the 2015**
44 **regular session of the Seventy-eighth Legislative Assembly adjourns sine die.**