

House Bill 2688

Sponsored by Representative GOMBERG (Pre-session filed.)

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 provisions allowing for optional reduced rates of personal income tax on nonpassive 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. Applies to tax years beginning on or after January 1, 2016.

Reinstates tax credit for renewable energy resource equipment manufacturing facility and extends sunset.

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 and section 3, chapter 474,
3 Oregon Laws 2011; 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 other than income from passive activity as determined
11 under section 469 of the Internal Revenue Code. "Nonpassive income" does not include wages, in-
12 terest, 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, **not to exceed \$1 million**, that meets the conditions of subsection
18 (6) of this section shall be 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; **and**

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]*

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

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

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

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

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

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

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

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

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

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

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

33 **SECTION 3.** Section 3, chapter 474, Oregon Laws 2011, is amended to read:

34 **Sec. 3.** A taxpayer may not be allowed a credit under [*section 2 of this 2011 Act*] **ORS 315.341**
 35 unless the taxpayer receives preliminary certification under [*section 10 of this 2011 Act*] **ORS**
 36 **285C.551** before January 1, 2014, **or on or after January 1, 2016, and before January 1, 2020.**

37 **SECTION 4. This 2015 Act takes effect on the 91st day after the date on which the 2015**
 38 **regular session of the Seventy-eighth Legislative Assembly adjourns sine die.**