

D R A F T

SUMMARY

Requires, for purposes of taxpayer election of reduced tax rate for certain pass-through nonpassive income, net increase in number of employees. Allows for taxpayer election of reduced tax rate on original or amended tax return. Provides that election is revocable.

Applies to tax years beginning on or after January 1, 2018.

Takes effect on 91st day following adjournment sine die.

A BILL FOR AN ACT

1
2 Relating to election of reduced rate of taxation on pass-through income;
3 creating new provisions; amending ORS 316.043; and prescribing an ef-
4 fective date.

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

6 **SECTION 1.** ORS 316.043 is amended to read:

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

8 (a) “Material participation” has the meaning given that term in section
9 469 of the Internal Revenue Code.

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

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

16 (2) If a taxpayer that meets the conditions of subsection (6) of this section
17 has nonpassive income attributable to any partnership or S corporation after
18 reduction for nonpassive losses, that portion of the taxpayer’s income that

1 meets the conditions of subsection (6) of this section shall be taxed at:

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

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

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

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

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

10 (D) Eight percent of taxable income exceeding \$1 million but not exceed-
11 ing \$2.5 million;

12 (E) Nine percent of taxable income exceeding \$2.5 million but not ex-
13 ceeding \$5 million; and

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

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

17 (4) A taxpayer shall use the subtractions, deductions or additions other-
18 wise allowed under this chapter in the calculation of income that is taxed
19 at the rates otherwise applicable under ORS 316.037. The only addition or
20 subtraction allowed in the calculation of nonpassive income for which the
21 taxpayer uses the reduced rates allowed under subsection (2)(b) of this sec-
22 tion shall be any depreciation adjustment directly related to the partnership
23 or S corporation.

24 (5) The election under subsection (2)(b) of this section shall be [*irrevocable*
25 *and shall be*] made on the taxpayer's original **or amended** return. If the
26 taxpayer uses the reduced rates allowed under subsection (2)(b) of this sec-
27 tion, the calculation of income shall be substantiated on a form prescribed
28 by the Department of Revenue and filed with the taxpayer's tax return for
29 the tax year or at such other time and manner as the department may pre-
30 scribe by rule. A taxpayer who uses the reduced rates available under sub-
31 section (2)(b) of this section may not join in the filing of a composite return

1 under ORS 314.778.

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

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

5 (b) The partnership or S corporation employs at least one person who is
6 not an owner, member or limited partner of the partnership or S corporation;
7 [*and*]

8 (c) **Compared to the immediately preceding tax year, the partner-**
9 **ship or S corporation has a net increase in full-time equivalent em-**
10 **ployees and its employees have an equal or higher average hourly**
11 **wage; and**

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

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

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

26 **SECTION 2. The amendments to ORS 316.043 by section 1 of this**
27 **2017 Act apply to tax years beginning on or after January 1, 2018.**

28 **SECTION 3. This 2017 Act takes effect on the 91st day after the date**
29 **on which the 2017 regular session of the Seventy-ninth Legislative**
30 **Assembly adjourns sine die.**

31