

Senate Bill 165

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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**.

For purposes of taxpayer election of reduced tax rate for certain pass-through nonpassive income, requires net increase in number of employees.

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 employment requirements for elective reduced rate of taxation on pass-through income;
3 creating new provisions; amending 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 is amended to read:

6 316.043. (1) As used in this section:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

18 (c) **Compared to the immediately preceding tax year, the partnership or S corporation**
19 **has a net increase in full-time equivalent employees and its employees have an equal or**
20 **higher average hourly wage; and**

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

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

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

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

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

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