

Requested by Senator HASS

**PROPOSED AMENDMENTS TO
SENATE BILL 164**

1 On page 1 of the printed bill, line 3, after the semicolon insert “repealing
2 ORS 316.044;”.

3 Delete lines 5 through 29 and delete page 2 and insert:

4 **“SECTION 1.** ORS 316.043 is amended to read:

5 “316.043. (1) As used in this section:

6 “(a) ‘Material participation’ has the meaning given that term in section
7 469 of the Internal Revenue Code.

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

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

14 “(2) If a taxpayer that meets the conditions of subsection [(6)] (5) of this
15 section has nonpassive income attributable to any partnership or S corpo-
16 ration after reduction for nonpassive losses, that portion of the taxpayer’s
17 income that meets the conditions of subsection [(6)] (5) of this section shall
18 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

1 thereof;

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

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

6 “(D) Eight percent of taxable income exceeding \$1 million but not ex-
7 ceeding \$2.5 million;

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

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

11 “[(3) *The reduced rates allowed under subsection (2)(b) of this section may*
12 *be adjusted as provided in ORS 316.044.*]

13 “[(4)] (3) A taxpayer shall use the subtractions, deductions or additions
14 otherwise allowed under this chapter in the calculation of income that is
15 taxed at the rates otherwise applicable under ORS 316.037. The only addition
16 or subtraction allowed in the calculation of nonpassive income for which the
17 taxpayer uses the reduced rates allowed under subsection (2)(b) of this sec-
18 tion shall be any depreciation adjustment directly related to the partnership
19 or S corporation.

20 “[(5)] (4) The election under subsection (2)(b) of this section shall be
21 irrevocable and shall be made on the taxpayer’s original return. If the tax-
22 payer uses the reduced rates allowed under subsection (2)(b) of this section,
23 the calculation of income shall be substantiated on a form prescribed by the
24 Department of Revenue and filed with the taxpayer’s tax return for the tax
25 year or at such other time and manner as the department may prescribe by
26 rule. A taxpayer who uses the reduced rates available under subsection (2)(b)
27 of this section may not join in the filing of a composite return under ORS
28 314.778.

29 “[(6)] (5) The rates listed in subsection (2)(b) of this section apply to
30 nonpassive income attributable to a partnership or S corporation only if **all**

1 **of the following conditions are met:**

2 “(a) The taxpayer materially participates in the trade or business[;].

3 “(b) The partnership or S corporation employs at least [*one person who*
4 *is not an owner, member or limited partner*] **10 persons during each pay**
5 **period who are not owners, members or limited partners** of the part-
6 nership or S corporation[; *and*].

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

13 “(d) **The trade or business operates in an industry in any of the**
14 **following sectors, as denoted by the corresponding North American**
15 **Industry Classification System code:**

16 “(A) **Agriculture, Forestry, Fishing and Hunting, (11).**

17 “(B) **Mining, Quarrying and Oil and Gas Extraction, (21).**

18 “(C) **Manufacturing, (31-33).**

19 “(D) **Wholesale Trade, (42).**

20 “(E) **Transportation and Warehousing, (48-49).**

21 “(F) **Information, (51).**

22 “(G) **Accommodation and Food Services, (72).**

23 “[~~(7)(a)~~] **(6)(a)** A nonresident may apply the reduced rates allowed under
24 subsection (2)(b) of this section only to income earned in Oregon.

25 “(b) A part-year resident shall calculate the tax due using the reduced
26 rates allowed under subsection (2)(b) of this section by first applying those
27 rates to the taxpayer’s nonpassive income that meets the requirements of
28 subsection [~~(6)~~] **(5)** of this section, and then multiplying that amount by the
29 ratio of the taxpayer’s nonpassive income in Oregon divided by nonpassive
30 income from all sources.

