

Requested by JOINT COMMITTEE ON TAX REFORM

**PROPOSED AMENDMENTS TO
HOUSE BILL 2830**

1 In line 2 of the printed corrected bill, delete “317.061” and insert “316.043,
2 317.061, 317.090 and 317.853; repealing ORS 316.044”.

3 In line 7, delete “seven” and insert “eight”.

4 In line 9, delete “eight” and insert “nine”.

5 Delete lines 10 through 13 and insert:

6 **“SECTION 2.** 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)] (5) of this
17 section has nonpassive income attributable to any partnership or S corpo-
18 ration after reduction for nonpassive losses, that portion of the taxpayer’s
19 income that meets the conditions of subsection [(6)] (5) of this section shall
20 be taxed at:

21 “(a) The rate applicable under ORS 316.037; or

1 “(b) At the election of the taxpayer, a rate of:
2 “(A) Seven percent of the first \$250,000 of taxable income, or fraction
3 thereof;
4 “(B) Seven and two-tenths percent of taxable income exceeding \$250,000
5 but not exceeding \$500,000;
6 “(C) Seven and six-tenths percent of taxable income exceeding \$500,000
7 but not exceeding \$1 million;
8 “(D) Eight percent of taxable income exceeding \$1 million but not ex-
9 ceeding \$2.5 million;
10 “(E) Nine percent of taxable income exceeding \$2.5 million but not ex-
11 ceeding \$5 million; and
12 “(F) Nine and nine-tenths percent of taxable income exceeding \$5 million.
13 “[(3) *The reduced rates allowed under subsection (2)(b) of this section may*
14 *be adjusted as provided in ORS 316.044.*]
15 “[(4)] **(3)** A taxpayer shall use the subtractions, deductions or additions
16 otherwise allowed under this chapter in the calculation of income that is
17 taxed at the rates otherwise applicable under ORS 316.037. The only addition
18 or subtraction allowed in the calculation of nonpassive income for which the
19 taxpayer uses the reduced rates allowed under subsection (2)(b) of this sec-
20 tion shall be any depreciation adjustment directly related to the partnership
21 or S corporation.
22 “[(5)] **(4)** The election under subsection (2)(b) of this section shall be
23 irrevocable and shall be made on the taxpayer’s original return. If the tax-
24 payer uses the reduced rates allowed under subsection (2)(b) of this section,
25 the calculation of income shall be substantiated on a form prescribed by the
26 Department of Revenue and filed with the taxpayer’s tax return for the tax
27 year or at such other time and manner as the department may prescribe by
28 rule. A taxpayer who uses the reduced rates available under subsection (2)(b)
29 of this section may not join in the filing of a composite return under ORS
30 314.778.

1 “[6] (5) The rates listed in subsection (2)(b) of this section apply to
2 nonpassive income attributable to a partnership or S corporation only if **all**
3 **of the following conditions are met:**

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

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

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

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

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

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

20 “(C) **Manufacturing, (31-33).**

21 “(D) **Wholesale Trade, (42).**

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

23 “(F) **Information, (51).**

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

25 “[7(a)] (6)(a) A nonresident may apply the reduced rates allowed under
26 subsection (2)(b) of this section only to income earned in Oregon.

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

1 ratio of the taxpayer's nonpassive income in Oregon divided by nonpassive
2 income from all sources.

3 **SECTION 3.** ORS 317.853 is amended to read:

4 "317.853. (1) For tax years beginning on or after January 1, 2013, and be-
5 fore January 1, 2017, any revenue that is received as a result of a rate of tax
6 above 7.5 percent imposed under this chapter and that is in excess of the
7 revenue that would be received under this chapter at a rate of 7.5 percent
8 shall be deposited into the Oregon Rainy Day Fund established by ORS
9 293.144.

10 "(2) For tax years beginning on or after January 1, 2017, any revenue that
11 is received as a result of a rate of tax above [7.2] **8.6** percent imposed under
12 this chapter and that is in excess of the revenue that would be received un-
13 der this chapter at a rate of [7.2] **8.6** percent shall be deposited into the
14 Oregon Rainy Day Fund established by ORS 293.144.

15 "(3) Before the end of each biennium, beginning with the biennium ending
16 on June 30, 2015, the Department of Revenue shall estimate the revenue de-
17 scribed in subsection (1) or (2) of this section that is received during the
18 biennium. An amount equal to that estimate shall be transferred into the
19 Oregon Rainy Day Fund established by ORS 293.144 on or before June 30 of
20 each odd-numbered year.

21 **SECTION 4.** ORS 317.090 is amended to read:

22 "317.090. (1) As used in this section:

23 "(a) 'Oregon sales' means:

24 "(A) If the corporation apportions business income under ORS 314.650 to
25 314.665 for Oregon tax purposes, the total sales of the taxpayer in this state
26 during the tax year, as determined for purposes of ORS 314.665;

27 "(B) If the corporation does not apportion business income for Oregon tax
28 purposes, the total sales in this state that the taxpayer would have had, as
29 determined for purposes of ORS 314.665, if the taxpayer were required to
30 apportion business income for Oregon tax purposes; or

1 “(C) If the corporation apportions business income using a method dif-
2 ferent from the method prescribed by ORS 314.650 to 314.665, Oregon sales
3 as defined by the Department of Revenue by rule.

4 “(b) If the corporation is an agricultural cooperative that is a cooperative
5 organization described in section 1381 of the Internal Revenue Code, ‘Oregon
6 sales’ does not include sales representing business done with or for members
7 of the agricultural cooperative.

8 “(2) Each corporation or affiliated group of corporations filing a return
9 under ORS 317.710 shall pay annually to the state, for the privilege of car-
10 rying on or doing business by it within this state, a minimum tax as follows:

11 “(a) If Oregon sales properly reported on a return are:

12 “(A) Less than \$500,000, the minimum tax is [~~\$150~~] **\$300**.

13 “(B) \$500,000 or more, but less than \$1 million, the minimum tax is
14 [~~\$500~~] **\$1,000**.

15 “(C) \$1 million or more, but less than \$2 million, the minimum tax is
16 [~~\$1,000~~] **\$2,000**.

17 “(D) \$2 million or more, but less than \$3 million, the minimum tax is
18 [~~\$1,500~~] **\$3,000**.

19 “(E) \$3 million or more, but less than \$5 million, the minimum tax is
20 [~~\$2,000~~] **\$4,000**.

21 “(F) \$5 million or more, but less than \$7 million, the minimum tax is
22 [~~\$4,000~~] **\$8,000**.

23 “(G) \$7 million or more, but less than \$10 million, the minimum tax is
24 [~~\$7,500~~] **\$15,000**.

25 “(H) \$10 million or more, but less than \$25 million, the minimum tax is
26 [~~\$15,000~~] **\$30,000**.

27 “(I) \$25 million or more, but less than \$50 million, the minimum tax is
28 [~~\$30,000~~] **\$60,000**.

29 “(J) \$50 million or more, but less than \$75 million, the minimum tax is
30 [~~\$50,000~~] **\$100,000**.

1 “(K) \$75 million or more, but less than \$100 million, the minimum tax is
2 ~~[\$75,000]~~ **\$150,000.**

3 “(L) \$100 million or more, the minimum tax is ~~[\$100,000]~~ **\$200,000.**

4 “(b) If a corporation is an S corporation, the minimum tax is ~~[\$150]~~
5 **\$300.**

6 “(3) The minimum tax is not apportionable (except in the case of a change
7 of accounting periods), is payable in full for any part of the year during
8 which a corporation is subject to tax, and may not be reduced, paid or oth-
9 erwise satisfied through the use of any tax credit.

10 **“SECTION 5.** ORS 317.090, as amended by section 44, chapter 701, Oregon
11 Laws 2015, is amended to read:

12 “317.090. (1) As used in this section:

13 “(a) ‘Oregon sales’ means:

14 “(A) If the corporation apportions business income under ORS 314.650 to
15 314.665 for Oregon tax purposes, the total sales of the taxpayer in this state
16 during the tax year, as determined for purposes of ORS 314.665;

17 “(B) If the corporation does not apportion business income for Oregon tax
18 purposes, the total sales in this state that the taxpayer would have had, as
19 determined for purposes of ORS 314.665, if the taxpayer were required to
20 apportion business income for Oregon tax purposes; or

21 “(C) If the corporation apportions business income using a method dif-
22 ferent from the method prescribed by ORS 314.650 to 314.665, Oregon sales
23 as defined by the Department of Revenue by rule.

24 “(b) If the corporation is an agricultural cooperative that is a cooperative
25 organization described in section 1381 of the Internal Revenue Code, ‘Oregon
26 sales’ does not include sales representing business done with or for members
27 of the agricultural cooperative.

28 “(2) Each corporation or affiliated group of corporations filing a return
29 under ORS 317.710 shall pay annually to the state, for the privilege of car-
30 rying on or doing business by it within this state, a minimum tax as follows:

1 “(a) If Oregon sales properly reported on a return are:

2 “(A) Less than \$500,000, the minimum tax is [~~\$150~~] **\$300**.

3 “(B) \$500,000 or more, but less than \$1 million, the minimum tax is
4 [~~\$500~~] **\$1,000**.

5 “(C) \$1 million or more, but less than \$2 million, the minimum tax is
6 [~~\$1,000~~] **\$2,000**.

7 “(D) \$2 million or more, but less than \$3 million, the minimum tax is
8 [~~\$1,500~~] **\$3,000**.

9 “(E) \$3 million or more, but less than \$5 million, the minimum tax is
10 [~~\$2,000~~] **\$4,000**.

11 “(F) \$5 million or more, but less than \$7 million, the minimum tax is
12 [~~\$4,000~~] **\$8,000**.

13 “(G) \$7 million or more, but less than \$10 million, the minimum tax is
14 [~~\$7,500~~] **\$15,000**.

15 “(H) \$10 million or more, but less than \$25 million, the minimum tax is
16 [~~\$15,000~~] **\$30,000**.

17 “(I) \$25 million or more, but less than \$50 million, the minimum tax is
18 [~~\$30,000~~] **\$60,000**.

19 “(J) \$50 million or more, but less than \$75 million, the minimum tax is
20 [~~\$50,000~~] **\$100,000**.

21 “(K) \$75 million or more, but less than \$100 million, the minimum tax is
22 [~~\$75,000~~] **\$150,000**.

23 “(L) \$100 million or more, the minimum tax is [~~\$100,000~~] **\$200,000**.

24 “(b) If a corporation is an S corporation, the minimum tax is [~~\$150~~]
25 **\$300**.

26 “(3) The minimum tax is not apportionable (except in the case of a change
27 of accounting periods), and is payable in full for any part of the year during
28 which a corporation is subject to tax.

29 **“SECTION 6. The amendments to ORS 316.043, 317.061 and 317.090**
30 **by sections 1, 2, 4 and 5 of this 2017 Act apply to tax years beginning**

1 on or after January 1, 2017.

2 **“SECTION 7.** The Department of Revenue shall waive any interest
3 that would otherwise apply to taxes due if the interest is based on
4 underpayment or underreporting that results solely from the amend-
5 ments to ORS 316.043, 317.061 and 317.090 by sections 1, 2, 4 and 5 of this
6 2017 Act.

7 **“SECTION 8.** Section 7 of this 2017 Act applies to tax years begin-
8 ning on or after January 1, 2017, and before January 1, 2018.

9 **“SECTION 9.** ORS 316.044 is repealed.

10 **“SECTION 10.** This 2017 Act takes effect on the 91st day after the
11 date on which the 2017 regular session of the Seventy-ninth Legislative
12 Assembly adjourns sine die.”.

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