

SB 1528-3
(LC 195)
2/2/18 (CMT/ps)

Requested by SENATE COMMITTEE ON FINANCE AND REVENUE

**PROPOSED AMENDMENTS TO
SENATE BILL 1528**

1 On page 1 of the printed bill, line 2, after “amending” delete the rest of
2 the line and delete line 3 and insert “ORS 314.752, 316.037, 316.043 and
3 318.031; repealing ORS 316.044; and prescribing an effective date.”.

4 Delete lines 5 through 26 and delete pages 2 through 6 and insert:

5 **“SECTION 1. Sections 2 and 3 of this 2018 Act are added to and**
6 **made a part of ORS chapter 315.**

7 **“SECTION 2. (1) A credit against the taxes that are otherwise due**
8 **under ORS chapter 316 or, if the taxpayer is a corporation, under ORS**
9 **chapter 317 or 318, is allowed to a taxpayer for certified Opportunity**
10 **Grant contributions made by the taxpayer during the tax year to the**
11 **Opportunity Grant Fund established under section 4 of this 2018 Act.**

12 **“(2)(a) The Department of Revenue shall, in cooperation with the**
13 **Higher Education Coordinating Commission, conduct an auction of tax**
14 **credits under this section. The department may conduct the auction**
15 **in the manner that it determines is best suited to maximize the return**
16 **to the state on the sale of tax credit certifications and shall announce**
17 **a reserve bid prior to conducting the auction. The reserve amount**
18 **shall be at least 95 percent of the total amount of the tax credit.**
19 **Moneys necessary to reimburse the department for the actual costs**
20 **incurred by the department in administering an auction, not to exceed**
21 **0.25 percent of auction proceeds, are continuously appropriated to the**

1 department. The department shall deposit net receipts from the auc-
2 tion required under this section in the Opportunity Grant Fund.

3 “(b) The commission shall adopt rules in order to achieve the fol-
4 lowing goals:

5 “(A) Subject to paragraph (a) of this subsection, generate contri-
6 butions for which tax credits of \$14 million are certified for each fiscal
7 year;

8 “(B) Maximize income and excise tax revenues that are retained by
9 the State of Oregon for state operations; and

10 “(C) Provide the necessary financial incentives for taxpayers to
11 make contributions, taking into consideration the impact of granting
12 a credit upon a taxpayer’s federal income tax liability.

13 “(3) Contributions made under this section shall be deposited in the
14 Opportunity Grant Fund.

15 “(4)(a) Upon receipt of a contribution, the commission shall, except
16 as provided in section 3 of this 2018 Act, issue to the taxpayer written
17 certification of the amount certified for tax credit under this section
18 to the extent the amount certified for tax credit, when added to all
19 amounts previously certified for tax credit under this section, does not
20 exceed \$14 million for the fiscal year in which certification is made.

21 “(b) The commission and the department are not liable, and a re-
22 fund of a contributed amount need not be made, if a taxpayer that has
23 received tax credit certification is unable to use all or a portion of the
24 tax credit to offset the tax liability of the taxpayer.

25 “(5) To the extent the commission does not certify contributed
26 amounts as eligible for a tax credit under this section, the taxpayer
27 may request a refund of the amount the taxpayer contributed, and the
28 commission shall refund that amount.

29 “(6)(a) Except as provided in paragraph (b) of this subsection, a tax
30 credit claimed under this section may not exceed the tax liability of

1 the taxpayer and may not be carried over to another tax year.

2 “(b) Any tax credit otherwise allowable under this section that is
3 not used by the taxpayer in a particular tax year may be carried for-
4 ward and offset against the taxpayer’s tax liability for the next suc-
5 ceeding tax year. Any credit remaining unused in the next succeeding
6 tax year may be carried forward and used in the second succeeding tax
7 year, and likewise, any credit not used in that second succeeding tax
8 year may be carried forward and used in the third succeeding tax year
9 but may not be carried forward for any tax year thereafter.

10 “(c) A taxpayer is not eligible for a tax credit under this section if
11 the first tax year for which the credit would otherwise be allowed be-
12 gins on or after January 1, 2025.

13 “(7) If a tax credit is claimed under this section by a nonresident
14 or part-year resident taxpayer, the amount shall be allowed without
15 proration under ORS 316.117.

16 “(8) If the amount of contribution for which a tax credit certifica-
17 tion is made is allowed as a deduction for federal tax purposes, the
18 amount of the contribution shall be added to federal taxable income
19 for Oregon tax purposes.

20 **“SECTION 3. (1) In lieu of the issuance of certifications for tax**
21 **credit under section 2 of this 2018 Act by the Higher Education Coor-**
22 **minating Commission, the Legislative Assembly may, no later than 30**
23 **days prior to the end of each fiscal year, appropriate to the commis-**
24 **sion for deposit into the Opportunity Grant Fund established under**
25 **section 4 of this 2018 Act an amount equal to the total amount that**
26 **would otherwise be certified for tax credits during the upcoming fiscal**
27 **year, based on the amount of contributions and accompanying appli-**
28 **cations for credit received by the commission during the fiscal year.**

29 “(2) If the Legislative Assembly makes the election allowed in sub-
30 section (1) of this section:

1 “(a) Any contributions to the Opportunity Grant Fund made for the
2 upcoming fiscal year and for which an application for a credit under
3 section 2 of this 2018 Act is pending shall, at the request of the tax-
4 payer, be refunded by the commission; and

5 “(b) A credit under section 2 of this 2018 Act may not be claimed
6 for any contribution made during the current fiscal year.

7 “SECTION 4. (1) The Opportunity Grant Fund is established in the
8 State Treasury, separate and distinct from the General Fund. Interest
9 earned by the Opportunity Grant Fund shall be credited to the fund.

10 “(2) Moneys in the Opportunity Grant Fund shall consist of:

11 “(a) Amounts donated to the fund;

12 “(b) Amounts appropriated or otherwise transferred to the fund by
13 the Legislative Assembly;

14 “(c) Other amounts deposited in the fund from any source; and

15 “(d) Interest earned by the fund.

16 “(3) Moneys in the fund are continuously appropriated to the Higher
17 Education Coordinating Commission. After the payment of refunds to
18 taxpayers as described in sections 2 and 3 of this 2018 Act and pay-
19 ments to a tax credit marketer for marketing services provided by the
20 marketer as described in section 5 of this 2018 Act, the balance re-
21 maining in the fund shall be used for the Oregon Opportunity Grant
22 program under ORS 348.260.

23 “(4) Expenditures from the fund are not subject to ORS 291.232 to
24 291.260.

25 “SECTION 5. The Higher Education Coordinating Commission may
26 hire or contract with a marketer to market the tax credits described
27 in section 2 of this 2018 Act to taxpayers.

28 “SECTION 6. Sections 2, 3 and 5 of this 2018 Act apply to tax years
29 beginning on or after January 1, 2019, and before January 1, 2025.

30 “SECTION 7. ORS 314.752 is amended to read:

1 “314.752. (1) Except as provided in ORS 314.740 (5)(b), the tax credits al-
2 lowed or allowable to a C corporation for purposes of ORS chapter 317 or
3 318 shall not be allowed to an S corporation. The business tax credits al-
4 lowed or allowable for purposes of ORS chapter 316 shall be allowed or are
5 allowable to the shareholders of the S corporation.

6 “(2) In determining the tax imposed under ORS chapter 316, as provided
7 under ORS 314.734, on income of the shareholder of an S corporation, there
8 shall be taken into account the shareholder’s pro rata share of business tax
9 credit (or item thereof) that would be allowed to the corporation (but for
10 subsection (1) of this section) or recapture or recovery thereof. The credit (or
11 item thereof), recapture or recovery shall be passed through to shareholders
12 in pro rata shares as determined in the manner prescribed under section
13 1377(a) of the Internal Revenue Code.

14 “(3) The character of any item included in a shareholder’s pro rata share
15 under subsection (2) of this section shall be determined as if such item were
16 realized directly from the source from which realized by the corporation, or
17 incurred in the same manner as incurred by the corporation.

18 “(4) If the shareholder is a nonresident and there is a requirement appli-
19 cable for the business tax credit that in the case of a nonresident the credit
20 be allowed in the proportion provided in ORS 316.117, then that provision
21 shall apply to the nonresident shareholder.

22 “(5) As used in this section, ‘business tax credit’ means the following
23 credits: ORS 315.104 (forestation and reforestation), ORS 315.138 (fish
24 screening, by-pass devices, fishways), ORS 315.141 (biomass production for
25 biofuel), ORS 315.156 (crop gleaning), ORS 315.164 and 315.169 (agriculture
26 workforce housing), ORS 315.176 (bovine manure), ORS 315.204 (dependent
27 care assistance), ORS 315.208 (dependent care facilities), ORS 315.213 (con-
28 tributions for child care), ORS 315.237 (employee and dependent scholar-
29 ships), ORS 315.271 (individual development accounts), ORS 315.304
30 (pollution control facility), ORS 315.326 (renewable energy development con-

1 tributions), ORS 315.331 (energy conservation projects), ORS 315.336 (trans-
2 portation projects), ORS 315.341 (renewable energy resource equipment
3 manufacturing facilities), ORS 315.354 and 469B.151 (energy conservation fa-
4 cilities), ORS 315.506 (tribal taxes on reservation enterprise zones and res-
5 ervation partnership zones), ORS 315.507 (electronic commerce), ORS 315.514
6 (film production development contributions), ORS 315.521 (university venture
7 development funds), ORS 315.523 (employee training programs), ORS 315.533
8 (low income community jobs initiative), ORS 315.675 (Trust for Cultural De-
9 velopment Account contributions), ORS 317.097 (loans for affordable hous-
10 ing), ORS 317.124 (long term enterprise zone facilities), ORS 317.147 (loans
11 for agriculture workforce housing), ORS 317.152 (qualified research expenses)
12 and ORS 317.154 (alternative qualified research expenses) and section 9,
13 chapter 774, Oregon Laws 2013 (alternative fuel vehicle contributions) **and**
14 **section 2 of this 2018 Act (Opportunity Grant Fund contributions).**

15 **“SECTION 8.** ORS 318.031 is amended to read:

16 “318.031. It being the intention of the Legislative Assembly that this
17 chapter and ORS chapter 317 shall be administered as uniformly as possible
18 (allowance being made for the difference in imposition of the taxes), ORS
19 305.140 and 305.150, ORS chapter 314 and the following sections are incor-
20 porated into and made a part of this chapter: ORS 315.104, 315.141, 315.156,
21 315.176, 315.204, 315.208, 315.213, 315.304, 315.326, 315.331, 315.336, 315.506,
22 315.507, 315.523 and 315.533 **and section 2 of this 2018 Act** (all only to the
23 extent applicable to a corporation) and ORS chapter 317.

24 **“SECTION 9. Section 10 of this 2018 Act is added to and made a part**
25 **of ORS chapter 316.**

26 **“SECTION 10. There shall be added to federal taxable income for**
27 **Oregon tax purposes the amount allowable as a deduction under sec-**
28 **tion 199A(a) of the Internal Revenue Code for the tax year.**

29 **“SECTION 11. Section 10 of this 2018 Act applies to tax years be-**
30 **ginning on or after January 1, 2018.**

1 **“SECTION 12.** ORS 316.043 is amended to read:

2 “316.043. (1) As used in this section:

3 “(a) ‘Material participation’ has the meaning given that term in section
4 469 of the Internal Revenue Code.

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

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

11 “(2) If a taxpayer that meets the conditions of subsection [(6)] **(5)** of this
12 section has nonpassive income attributable to any partnership or S corpo-
13 ration after reduction for nonpassive losses **or does business as a sole**
14 **proprietorship**, that portion of the taxpayer’s income, **not to exceed**
15 **\$250,000**, that meets the conditions of subsection [(6)] **(5)** of this section shall
16 be taxed at:

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

18 “(b) At the election of the taxpayer, a rate of[:]

19 “[(A)] seven percent of the first \$250,000 of taxable income, or fraction
20 thereof[;].

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

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

25 “[(D) *Eight percent of taxable income exceeding \$1 million but not exceed-*
26 *ing \$2.5 million;*]

27 “[(E) *Nine percent of taxable income exceeding \$2.5 million but not ex-*
28 *ceeding \$5 million; and]*

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

1 “[3] *The reduced rates allowed under subsection (2)(b) of this section may*
2 *be adjusted as provided in ORS 316.044.*]

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

10 “[5] **(4)** The election under subsection (2)(b) of this section shall be
11 irrevocable and shall be made on the taxpayer’s original return. If the tax-
12 payer uses the reduced [*rates*] **rate** allowed under subsection (2)(b) of this
13 section, the calculation of income shall be substantiated on a form prescribed
14 by the Department of Revenue and filed with the taxpayer’s tax return for
15 the tax year or at such other time and manner as the department may pre-
16 scribe by rule. A taxpayer who uses the reduced [*rates*] **rate** available under
17 subsection (2)(b) of this section may not join in the filing of a composite
18 return under ORS 314.778.

19 “[6] **(5)** The [*rates listed in*] **rate allowed under** subsection (2)(b) of this
20 section [*apply*] **applies** to [*nonpassive*] income attributable to a partnership,
21 [*or*] S corporation **or sole proprietorship** only if:

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

23 “(b) The partnership, [*or*] S corporation **or sole proprietorship** employs
24 at least one person who is not an owner, member or limited partner of the
25 partnership or S corporation[; *and*] **or the owner of the sole**
26 **proprietorship**.

27 “(c) At least 1,200 aggregate hours of work in Oregon are performed, by
28 the close of the tax year for which the reduced rate is allowed, by employees
29 who meet the requirements of paragraph (b) of this subsection and who are
30 employed by the partnership, [*or*] S corporation **or sole proprietorship**. In

1 determining whether this requirement is met, only hours worked in a week
2 in which a worker works at least 30 hours may be considered.

3 **“(d) The hours of employment required under this subsection are**
4 **not performed in industries in the following sectors, as denoted by the**
5 **North American Industry Classification System codes:**

6 **“(A) Professional, scientific and technical services (54); or**

7 **“(B) Health care and social assistance (62).**

8 **“(6) A taxpayer doing business as a sole proprietorship shall apply**
9 **the reduced rate to the sole proprietorship’s net profit as reported on**
10 **the taxpayer’s return.**

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

13 **“(b) A part-year resident shall calculate the tax due using the reduced**
14 **[rates] rate allowed under subsection (2)(b) of this section by first applying**
15 **[those rates] the rate to the taxpayer’s [nonpassive] income that meets the**
16 **requirements of subsection [(6)] (5) of this section, and then multiplying that**
17 **amount by the ratio of the taxpayer’s [nonpassive] income in Oregon divided**
18 **by [nonpassive] income from all sources.**

19 **“SECTION 13. The amendments to ORS 316.043 by section 12 of this**
20 **2018 Act apply to tax years beginning on or after January 1, 2019.**

21 **“SECTION 14. The Department of Revenue shall waive any interest**
22 **that would otherwise apply to taxes due if the interest is based on**
23 **underpayment or underreporting that results solely from the amend-**
24 **ments to ORS 316.043 by section 12 of this 2018 Act.**

25 **“SECTION 15. Section 14 of this 2018 Act applies to tax years be-**
26 **ginning on or after January 1, 2019, and before January 1, 2020.**

27 **“SECTION 16. ORS 316.037 is amended to read:**

28 **“316.037. (1)(a) A tax is imposed for each taxable year on the entire tax-**
29 **able income of every resident of this state. The amount of the tax shall be**
30 **determined in accordance with the following table:**

1 “ _____

2	If taxable income is:	The tax is:
3		
4	Not over \$2,000	[5%] 4% of
5		taxable
6		income
7		
8	Over \$2,000 but not	
9	over \$5,000	[\$100] \$80 plus [7%] 6%
10		of the excess
11		over \$2,000
12		
13	Over \$5,000 but not	
14	over \$125,000	[\$310] \$260 plus 9%
15		of the excess
16		over \$5,000
17		
18	Over \$125,000	[\$11,110] \$10,980 plus 9.9%
19		of the excess
20		over \$125,000
21	“ _____	

22 “(b) For tax years beginning in each calendar year, the Department of
 23 Revenue shall adopt a table that shall apply in lieu of the table contained
 24 in paragraph (a) of this subsection, as follows:

25 “(A) Except as provided in subparagraph (D) of this paragraph, the mini-
 26 mum and maximum dollar amounts for each bracket for which a tax is im-
 27 posed shall be increased by the cost-of-living adjustment for the calendar
 28 year.

29 “(B) The rate applicable to any rate bracket as adjusted under subpara-
 30 graph (A) of this paragraph shall not be changed.

1 “(C) The amounts setting forth the tax, to the extent necessary to reflect
2 the adjustments in the rate brackets, shall be adjusted.

3 “(D) The rate brackets applicable to taxable income in excess of \$125,000
4 may not be adjusted.

5 “(c) For purposes of paragraph (b) of this subsection, the cost-of-living
6 adjustment for any calendar year is the percentage (if any) by which the
7 monthly averaged U.S. City Average Consumer Price Index for the 12 con-
8 secutive months ending August 31 of the prior calendar year exceeds the
9 monthly averaged index for the second quarter of the calendar year 1992.

10 “(d) As used in this subsection, ‘U.S. City Average Consumer Price
11 Index’ means the U.S. City Average Consumer Price Index for All Urban
12 Consumers (All Items) as published by the Bureau of Labor Statistics of the
13 United States Department of Labor.

14 “(e) If any increase determined under paragraph (b) of this subsection is
15 not a multiple of \$50, the increase shall be rounded to the next lower mul-
16 tiple of \$50.

17 “(2) A tax is imposed for each taxable year upon the entire taxable income
18 of every part-year resident of this state. The amount of the tax shall be
19 computed under subsection (1) of this section as if the part-year resident
20 were a full-year resident and shall be multiplied by the ratio provided under
21 ORS 316.117 to determine the tax on income derived from sources within this
22 state.

23 “(3) A tax is imposed for each taxable year on the taxable income of every
24 full-year nonresident that is derived from sources within this state. The
25 amount of the tax shall be determined in accordance with the table set forth
26 in subsection (1) of this section.

27 “**SECTION 17.** ORS 316.037, as amended by section 16 of this 2018 Act,
28 is amended to read:

29 “316.037. (1)(a) A tax is imposed for each taxable year on the entire tax-
30 able income of every resident of this state. The amount of the tax shall be

1 determined in accordance with the following table:

2 “ _____

3 If taxable income is: The tax is:

4

5 Not over \$2,000 ~~[4%]~~ **5%** of
6 taxable
7 income

8

9 Over \$2,000 but not
10 over \$5,000 ~~[\$80]~~ **\$100** plus ~~[6%]~~ **7%**
11 of the excess
12 over \$2,000

13

14 Over \$5,000 but not
15 over \$125,000 ~~[\$260]~~ **\$310** plus 9%
16 of the excess
17 over \$5,000

18

19 Over \$125,000 ~~[\$10,980]~~ **\$11,110** plus 9.9%
20 of the excess
21 over \$125,000

22 “ _____

23 “(b) For tax years beginning in each calendar year, the Department of
24 Revenue shall adopt a table that shall apply in lieu of the table contained
25 in paragraph (a) of this subsection, as follows:

26 “(A) Except as provided in subparagraph (D) of this paragraph, the mini-
27 mum and maximum dollar amounts for each bracket for which a tax is im-
28 posed shall be increased by the cost-of-living adjustment for the calendar
29 year.

30 “(B) The rate applicable to any rate bracket as adjusted under subpara-

1 graph (A) of this paragraph shall not be changed.

2 “(C) The amounts setting forth the tax, to the extent necessary to reflect
3 the adjustments in the rate brackets, shall be adjusted.

4 “(D) The rate brackets applicable to taxable income in excess of \$125,000
5 may not be adjusted.

6 “(c) For purposes of paragraph (b) of this subsection, the cost-of-living
7 adjustment for any calendar year is the percentage (if any) by which the
8 monthly averaged U.S. City Average Consumer Price Index for the 12 con-
9 secutive months ending August 31 of the prior calendar year exceeds the
10 monthly averaged index for the second quarter of the calendar year 1992.

11 “(d) As used in this subsection, ‘U.S. City Average Consumer Price
12 Index’ means the U.S. City Average Consumer Price Index for All Urban
13 Consumers (All Items) as published by the Bureau of Labor Statistics of the
14 United States Department of Labor.

15 “(e) If any increase determined under paragraph (b) of this subsection is
16 not a multiple of \$50, the increase shall be rounded to the next lower mul-
17 tiple of \$50.

18 “(2) A tax is imposed for each taxable year upon the entire taxable income
19 of every part-year resident of this state. The amount of the tax shall be
20 computed under subsection (1) of this section as if the part-year resident
21 were a full-year resident and shall be multiplied by the ratio provided under
22 ORS 316.117 to determine the tax on income derived from sources within this
23 state.

24 “(3) A tax is imposed for each taxable year on the taxable income of every
25 full-year nonresident that is derived from sources within this state. The
26 amount of the tax shall be determined in accordance with the table set forth
27 in subsection (1) of this section.

28 **“SECTION 18. (1) The amendments to ORS 316.037 by section 16 of**
29 **this 2018 Act apply to tax years beginning on or after January 1, 2018,**
30 **and before January 1, 2026.**

1 **“(2) The amendments to ORS 316.037 by section 17 of this 2018 Act**
2 **apply to tax years beginning on or after January 1, 2026.**

3 **“SECTION 19. ORS 316.044 is repealed.**

4 **“SECTION 20. This 2018 Act takes effect on the 91st day after the**
5 **date on which the 2018 regular session of the Seventy-ninth Legislative**
6 **Assembly adjourns sine die.”.**

7
