

HB 4026-2  
(LC 228)  
2/5/18 (CMT/ps)

Requested by HOUSE COMMITTEE ON REVENUE

**PROPOSED AMENDMENTS TO  
HOUSE BILL 4026**

1 In line 2 of the printed bill, after the first semicolon delete the rest of the  
2 line and insert “creating new provisions; amending ORS 316.043 and 317.267;  
3 repealing ORS 316.044; and prescribing an effective date.”.

4 Delete lines 4 through 22 and insert:

5 **“SECTION 1.** ORS 317.267 is amended to read:

6 “317.267. (1) To derive Oregon taxable income, there shall be added to  
7 federal taxable income amounts received as dividends from corporations de-  
8 ducted for federal purposes pursuant to section 243 [*or*], 245 **or 965** of the  
9 Internal Revenue Code, except section 245(c) of the Internal Revenue Code,  
10 amounts paid as dividends by a public utility or telecommunications utility  
11 and deducted for federal purposes pursuant to section 247 of the Internal  
12 Revenue Code or dividends eliminated under Treasury Regulations adopted  
13 under section 1502 of the Internal Revenue Code that are paid by members  
14 of an affiliated group that are eliminated from a consolidated federal return  
15 pursuant to ORS 317.715 (2).

16 “(2) To derive Oregon taxable income, after the modification prescribed  
17 under subsection (1) of this section, there shall be subtracted from federal  
18 taxable income an amount equal to 70 percent of dividends (determined  
19 without regard to section 78 of the Internal Revenue Code) received or  
20 deemed received from corporations if such dividends are included in federal  
21 taxable income. However:

1 “(a) In the case of any dividend on debt-financed portfolio stock as de-  
2 scribed in section 246A of the Internal Revenue Code, the subtraction al-  
3 lowed under this subsection shall be reduced under the same conditions and  
4 in same amount as the dividends received deduction otherwise allowable for  
5 federal income tax purposes is reduced under section 246A of the Internal  
6 Revenue Code.

7 “(b) In the case of any dividend received from a 20 percent owned corpo-  
8 ration, as defined in section 243(c) of the Internal Revenue Code, this sub-  
9 section shall be applied by substituting ‘80 percent’ for ‘70 percent.’

10 “(c) A dividend that is not treated as a dividend under section 243(d) or  
11 965(c)(3) of the Internal Revenue Code may not be treated as a dividend for  
12 purposes of this subsection.

13 “(d) If a dividends received deduction is not allowed for federal tax pur-  
14 poses because of section 246(a) or (c) of the Internal Revenue Code, a sub-  
15 traction may not be made under this subsection for received dividends that  
16 are described in section 246(a) or (c) of the Internal Revenue Code.

17 “(e) In the case of any dividend received from an alien, domestic or for-  
18 eign insurer, as defined in ORS 731.082, that would be included in the  
19 taxpayer’s consolidated Oregon return but for the application of ORS 317.710  
20 (5) or (7), this subsection shall be applied by substituting ‘100 percent’ for  
21 ‘70 percent.’

22 **“(f) A dividends received deduction is not allowed for dividends  
23 deemed received under section 965 of the Internal Revenue Code.**

24 “(3) There shall be excluded from the sales factor of any apportionment  
25 formula employed to attribute income to this state any amount subtracted  
26 from federal taxable income under subsection (2) of this section.

27 **“SECTION 2. The amendments to ORS 317.267 by section 1 of this  
28 2018 Act apply to tax years beginning on or after January 1, 2017.**

29 **“SECTION 3. Section 4 of this 2018 Act is added to and made a part  
30 of ORS chapter 316.**

1       **“SECTION 4. There shall be added to federal taxable income for**  
2 **Oregon tax purposes the amount allowable as a deduction under sec-**  
3 **tion 199A(a) of the Internal Revenue Code for the tax year.**

4       **“SECTION 5. Section 4 of this 2018 Act applies to tax years begin-**  
5 **ning on or after January 1, 2018.**

6       **“SECTION 6.** 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, **not to exceed \$250,000**, that meets the conditions of subsection  
20 [(6)] (5) of this section shall be taxed at:

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

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

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

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

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

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

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

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

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

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

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

23       “[(6)] (5) The [*rates listed in*] **rate allowed under** subsection (2)(b) of this  
24 section [*apply*] **applies** to nonpassive income attributable to a partnership  
25 or S corporation only if:

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

27       “(b) The partnership or S corporation employs at least one person who is  
28 not an owner, member or limited partner of the partnership or S corporation;  
29 and

30       “(c) At least 1,200 aggregate hours of work in Oregon are performed, by

1 the close of the tax year for which the reduced rate is allowed, by employees  
2 who meet the requirements of paragraph (b) of this subsection and who are  
3 employed by the partnership or S corporation. In determining whether this  
4 requirement is met, only hours worked in a week in which a worker works  
5 at least 30 hours may be considered.

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

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

14 “**SECTION 7. The amendments to ORS 316.043 by section 6 of this**  
15 **2018 Act apply to tax years beginning on or after January 1, 2019.**

16 “**SECTION 8. The Department of Revenue shall waive any interest**  
17 **that would otherwise apply to taxes due if the interest is based on**  
18 **underpayment or underreporting that results solely from the amend-**  
19 **ments to ORS 316.043 by section 6 of this 2018 Act.**

20 “**SECTION 9. Section 8 of this 2018 Act applies to tax years begin-**  
21 **ning on or after January 1, 2019, and before January 1, 2020.**

22 “**SECTION 10. ORS 316.044 is repealed.**

23 “**SECTION 11. This 2018 Act takes effect on the 91st day after the**  
24 **date on which the 2018 regular session of the Seventy-ninth Legislative**  
25 **Assembly adjourns sine die.”**

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