

SB 1528-5  
(LC 195)  
2/7/18 (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 may adopt rules necessary for the adminis-  
4 tration of the auction.

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

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

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

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

21 “(6)(a) Except as provided in paragraph (b) of this subsection, a tax  
22 credit claimed under this section may not exceed the tax liability of  
23 the taxpayer and may not be carried over to another tax year.

24 “(b) Any tax credit otherwise allowable under this section that is  
25 not used by the taxpayer in a particular tax year may be carried for-  
26 ward and offset against the taxpayer’s tax liability for the next suc-  
27 ceeding tax year. Any credit remaining unused in the next succeeding  
28 tax year may be carried forward and used in the second succeeding tax  
29 year, and likewise, any credit not used in that second succeeding tax  
30 year may be carried forward and used in the third succeeding tax year

1 but may not be carried forward for any tax year thereafter.

2 “(c) A taxpayer is not eligible for a tax credit under this section if  
3 the first tax year for which the credit would otherwise be allowed be-  
4 gins on or after January 1, 2024.

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

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

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

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

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

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

29 **“SECTION 4. (1) The Opportunity Grant Fund is established in the**  
30 **State Treasury, separate and distinct from the General Fund. Interest**

1 earned by the Opportunity Grant Fund shall be credited to the fund.

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

3 “(a) Amounts donated to the fund;

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

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

7 “(d) Interest earned by the fund.

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

15 “(4) Expenditures from the fund are not subject to ORS 291.232 to  
16 291.260.

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

20 “SECTION 6. Sections 2, 3 and 5 of this 2018 Act apply to tax years  
21 beginning on or after January 1, 2018, and before January 1, 2024.

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

23 “314.752. (1) Except as provided in ORS 314.740 (5)(b), the tax credits al-  
24 lowed or allowable to a C corporation for purposes of ORS chapter 317 or  
25 318 shall not be allowed to an S corporation. The business tax credits al-  
26 lowed or allowable for purposes of ORS chapter 316 shall be allowed or are  
27 allowable to the shareholders of the S corporation.

28 “(2) In determining the tax imposed under ORS chapter 316, as provided  
29 under ORS 314.734, on income of the shareholder of an S corporation, there  
30 shall be taken into account the shareholder’s pro rata share of business tax

1 credit (or item thereof) that would be allowed to the corporation (but for  
2 subsection (1) of this section) or recapture or recovery thereof. The credit (or  
3 item thereof), recapture or recovery shall be passed through to shareholders  
4 in pro rata shares as determined in the manner prescribed under section  
5 1377(a) of the Internal Revenue Code.

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

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

14 “(5) As used in this section, ‘business tax credit’ means the following  
15 credits: ORS 315.104 (forestation and reforestation), ORS 315.138 (fish  
16 screening, by-pass devices, fishways), ORS 315.141 (biomass production for  
17 biofuel), ORS 315.156 (crop gleaning), ORS 315.164 and 315.169 (agriculture  
18 workforce housing), ORS 315.176 (bovine manure), ORS 315.204 (dependent  
19 care assistance), ORS 315.208 (dependent care facilities), ORS 315.213 (con-  
20 tributions for child care), ORS 315.237 (employee and dependent scholar-  
21 ships), ORS 315.271 (individual development accounts), ORS 315.304  
22 (pollution control facility), ORS 315.326 (renewable energy development con-  
23 tributions), ORS 315.331 (energy conservation projects), ORS 315.336 (trans-  
24 portation projects), ORS 315.341 (renewable energy resource equipment  
25 manufacturing facilities), ORS 315.354 and 469B.151 (energy conservation fa-  
26 cilities), ORS 315.506 (tribal taxes on reservation enterprise zones and res-  
27 ervation partnership zones), ORS 315.507 (electronic commerce), ORS 315.514  
28 (film production development contributions), ORS 315.521 (university venture  
29 development funds), ORS 315.523 (employee training programs), ORS 315.533  
30 (low income community jobs initiative), ORS 315.675 (Trust for Cultural De-

1 velopment Account contributions), ORS 317.097 (loans for affordable hous-  
2 ing), ORS 317.124 (long term enterprise zone facilities), ORS 317.147 (loans  
3 for agriculture workforce housing), ORS 317.152 (qualified research expenses)  
4 and ORS 317.154 (alternative qualified research expenses) and section 9,  
5 chapter 774, Oregon Laws 2013 (alternative fuel vehicle contributions) **and**  
6 **section 2 of this 2018 Act (Opportunity Grant Fund contributions).**

7 **SECTION 8.** ORS 318.031 is amended to read:

8 “318.031. It being the intention of the Legislative Assembly that this  
9 chapter and ORS chapter 317 shall be administered as uniformly as possible  
10 (allowance being made for the difference in imposition of the taxes), ORS  
11 305.140 and 305.150, ORS chapter 314 and the following sections are incor-  
12 porated into and made a part of this chapter: ORS 315.104, 315.141, 315.156,  
13 315.176, 315.204, 315.208, 315.213, 315.304, 315.326, 315.331, 315.336, 315.506,  
14 315.507, 315.523 and 315.533 **and section 2 of this 2018 Act** (all only to the  
15 extent applicable to a corporation) and ORS chapter 317.

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

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

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

23 **SECTION 12.** ORS 316.043 is amended to read:

24 “316.043. (1) As used in this section:

25 “(a) ‘Material participation’ has the meaning given that term in section  
26 469 of the Internal Revenue Code.

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

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

3 “(2) If a taxpayer that meets the conditions of subsection [(6)] **(5)** of this  
4 section has nonpassive income attributable to any partnership or S corpo-  
5 ration after reduction for nonpassive losses **or does business as a sole**  
6 **proprietorship**, that portion of the taxpayer’s income, **not to exceed**  
7 **\$250,000**, that meets the conditions of subsection [(6)] **(5)** of this section shall  
8 be taxed at:

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

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

11 “[A)] seven percent of the first \$250,000 of taxable income, or fraction  
12 thereof[:].

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

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

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

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

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

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

25 “[4)] **(3)** A taxpayer shall use the subtractions, deductions or additions  
26 otherwise allowed under this chapter in the calculation of income that is  
27 taxed at the rates otherwise applicable under ORS 316.037. The only addition  
28 or subtraction allowed in the calculation of [*nonpassive*] income for which  
29 the taxpayer uses the reduced [*rates*] **rate** allowed under subsection (2)(b)  
30 of this section shall be any depreciation adjustment directly related to the

1 partnership, [or] S corporation **or sole proprietorship**.

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

11 “[6] (5) The [rates listed in] **rate allowed under** subsection (2)(b) of this  
12 section [apply] **applies** to [nonpassive] income attributable to a partnership,  
13 [or] S corporation **or sole proprietorship** only if:

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

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

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

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

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

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

30 “(6) **A taxpayer doing business as a sole proprietorship shall apply**



1 **the reduced rate to the sole proprietorship’s net profit as reported on**  
2 **the taxpayer’s return.**

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

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

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

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

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

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

20 “316.037. (1)(a) A tax is imposed for each taxable year on the entire tax-  
21 able income of every resident of this state. The amount of the tax shall be  
22 determined in accordance with the following table:

23 “ \_\_\_\_\_

24 If taxable income is:	The tax is:
25	
26 Not over \$2,000	[5%] 4% of
27	taxable
28	income
29	
30 Over \$2,000 but not	

1 over \$5,000 [~~\$100~~ **\$80** plus [7%] **6%**  
2 of the excess  
3 over \$2,000  
4

5 Over \$5,000 but not  
6 over \$125,000 [~~\$310~~ **\$260** plus 9%  
7 of the excess  
8 over \$5,000  
9

10 Over \$125,000 [~~\$11,110~~ **\$10,980** plus 9.9%  
11 of the excess  
12 over \$125,000  
13

“

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

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

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

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

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

27 “(c) For purposes of paragraph (b) of this subsection, the cost-of-living  
28 adjustment for any calendar year is the percentage (if any) by which the  
29 monthly averaged U.S. City Average Consumer Price Index for the 12 con-  
30 secutive months ending August 31 of the prior calendar year exceeds the

1 monthly averaged index for the second quarter of the calendar year 1992.

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

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

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

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

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

21 “316.037. (1)(a) A tax is imposed for each taxable year on the entire tax-  
22 able income of every resident of this state. The amount of the tax shall be  
23 determined in accordance with the following table:

24 “ \_\_\_\_\_

25 If taxable income is:	The tax is:
26	
27 Not over \$2,000	[4%] 5% of
28	taxable
29	income

30

1 Over \$2,000 but not  
2 over \$5,000 [~~\$80~~] **\$100** plus [6%] **7%**  
3 of the excess  
4 over \$2,000  
5

6 Over \$5,000 but not  
7 over \$125,000 [~~\$260~~] **\$310** plus 9%  
8 of the excess  
9 over \$5,000  
10

11 Over \$125,000 [~~\$10,980~~] **\$11,110** plus 9.9%  
12 of the excess  
13 over \$125,000  
14

14 “ \_\_\_\_\_  
15 “(b) For tax years beginning in each calendar year, the Department of  
16 Revenue shall adopt a table that shall apply in lieu of the table contained  
17 in paragraph (a) of this subsection, as follows:

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

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

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

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

28 “(c) For purposes of paragraph (b) of this subsection, the cost-of-living  
29 adjustment for any calendar year is the percentage (if any) by which the  
30 monthly averaged U.S. City Average Consumer Price Index for the 12 con-

1 secutive months ending August 31 of the prior calendar year exceeds the  
2 monthly averaged index for the second quarter of the calendar year 1992.

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

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

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

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

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

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

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

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

29