



STATE OF OREGON
Legislative Counsel Committee

May 21, 2018

To: Senator Brian Boquist
From: Catherine M. Tosswill, Special Counsel and Chief Editor
Subject: Amendments to House Bill 4301, repealing disconnect from federal deduction

You asked that House Bill 4301 be amended to replace the contents of the introduced bill with the repeal of section 10 of Senate Bill 1528 (2018).¹ This section disconnected Oregon's tax laws from the federal deduction for pass-through income under section 199A of the Internal Revenue Code. Section 10 requires that Oregon taxpayers add back the amount of the taxpayer's federal 199A deduction on their state tax returns. I have prepared the -6 amendments to repeal section 10. If the -6 amendments were adopted, the federal deduction would flow through to Oregon taxpayers' state personal income tax returns. However, I do not believe that these amendments would fit within the title of the bill.

The title to House Bill 4301 is "relating to material participation in a business." The provisions of section 199A of the Internal Revenue Code allow a taxpayer to deduct a portion of the taxpayer's pass-through income on the taxpayer's federal tax return. This federal deduction is available for a wide range of pass-through income, including passive income. Thus, it differs from ORS 316.043, the elective reduced rate provision that is amended in the introduced bill. ORS 316.043 conditions availability of the elective reduced tax rates on the taxpayer's material participation in the trade or business from which the income is derived. The repeal of section 10, and the resulting allowance of a state deduction for all types of pass-through income, not just income from a business in which the taxpayer materially participates, would not fit within the relating clause.

As we have discussed, were the committee to adopt these amendments, there is a viable argument that a title with this relating clause would not properly describe the resulting bill. If that argument succeeded, the bill would be void if enacted because it violates the requirements of Article IV, section 20, of the Oregon Constitution.

Encl.

¹ Section 10, chapter 108, Oregon Laws 2018 (Enrolled Senate Bill 1528).