

# House Bill 4301

Sponsored by Representative KOTEK (at the request of Governor Kate Brown)

## SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure **as introduced**.

Expands availability of elective reduced personal income tax rate for certain pass-through income to taxpayers doing business as sole proprietors.

Applies to tax years beginning on or after January 1, 2018.

Takes effect on 91st day following adjournment sine die.

## A BILL FOR AN ACT

1  
2 Relating to material participation in a business; creating new provisions; amending ORS 316.043; and  
3 prescribing an effective date.

4 **Be It Enacted by the People of the State of Oregon:**

5 **SECTION 1.** ORS 316.043 is amended to read:

6 316.043. (1) As used in this section:

7 (a) "Material participation" has the meaning given that term in section 469 of the Internal Re-  
8 venue Code.

9 (b) "Nonpassive income" means income other than income from passive activity as determined  
10 under section 469 of the Internal Revenue Code. "Nonpassive income" does not include wages, in-  
11 terest, dividends or capital gains.

12 (c) "Nonpassive loss" means loss other than loss from passive activity as determined under  
13 section 469 of the Internal Revenue Code.

14 (d) **"Qualifying income" means a taxpayer's net income that meets the conditions of**  
15 **subsection (6) of this section, as reported on the taxpayer's return, and that is computed by**  
16 **taking the sum of the taxpayer's:**

17 (A) **Nonpassive income after reduction for nonpassive losses; and**

18 (B) **Business income or loss as a sole proprietor.**

19 (2) If a taxpayer that meets the conditions of subsection (6) of this section has nonpassive in-  
20 come attributable to any partnership or S corporation after reduction for nonpassive losses **or does**  
21 **business as a sole proprietorship**, that portion of the taxpayer's income that [*meets the conditions*  
22 *of subsection (6) of this section*] **is qualifying income** shall be taxed at:

23 (a) The rate applicable under ORS 316.037; or

24 (b) At the election of the taxpayer, a rate of:

25 (A) Seven percent of the first \$250,000 of taxable income, or fraction thereof;

26 (B) Seven and two-tenths percent of taxable income exceeding \$250,000 but not exceeding  
27 \$500,000;

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

30 (D) Eight percent of taxable income exceeding \$1 million but not exceeding \$2.5 million;

**NOTE:** Matter in **boldfaced** type in an amended section is new; matter [*italic and bracketed*] is existing law to be omitted. New sections are in **boldfaced** type.

1 (E) Nine percent of taxable income exceeding \$2.5 million but not exceeding \$5 million; and

2 (F) Nine and nine-tenths percent of taxable income exceeding \$5 million.

3 (3) The reduced rates allowed under subsection (2)(b) of this section may be adjusted as provided  
4 in ORS 316.044.

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

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

18 (6) The rates listed in subsection (2)(b) of this section apply to *[nonpassive]* income attributable  
19 to a partnership, *[or]* S corporation **or sole proprietorship** only if:

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

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

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

29 (7)(a) A nonresident may apply the reduced rates allowed under subsection (2)(b) of this section  
30 only to income earned in Oregon.

31 (b) A part-year resident shall calculate the tax due using the reduced rates allowed under sub-  
32 section (2)(b) of this section by first applying those rates to the taxpayer's *[nonpassive]* **qualifying**  
33 income *[that meets the requirements of subsection (6) of this section]*, and then multiplying that amount  
34 by the ratio of the taxpayer's *[nonpassive]* income in Oregon divided by *[nonpassive]* income from  
35 all sources.

36 **SECTION 2. The amendments to ORS 316.043 by section 1 of this 2018 special session Act**  
37 **apply to tax years beginning on or after January 1, 2018.**

38 **SECTION 3. This 2018 special session Act takes effect on the 91st day after the date on**  
39 **which the 2018 special session of the Seventy-ninth Legislative Assembly adjourns sine die.**

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