

Requested by Senator BOQUIST

**PROPOSED AMENDMENTS TO
HOUSE BILL 4301**

- 1 On page 1 of the printed bill, line 2, after “316.043” insert “and 316.044”.
- 2 Delete lines 5 through 30 and delete page 2 and insert:
- 3 **“SECTION 1.** ORS 316.043 is amended to read:
- 4 “316.043. (1) As used in this section:
- 5 “(a) ‘Material participation’ has the meaning given that term in section
- 6 469 of the Internal Revenue Code.
- 7 “(b) ‘Nonpassive income’ means income other than income from passive
- 8 activity as determined under section 469 of the Internal Revenue Code.
- 9 ‘Nonpassive income’ does not include wages, interest, dividends or capital
- 10 gains.
- 11 “(c) ‘Nonpassive loss’ means loss other than loss from passive activity as
- 12 determined under section 469 of the Internal Revenue Code.
- 13 **“(d) ‘Qualifying income’ means a taxpayer’s net income that meets**
- 14 **the conditions of subsection (6) of this section, as required to be re-**
- 15 **ported on the taxpayer’s return, and that is computed by taking the**
- 16 **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 sec-
- 20 tion has nonpassive income attributable to any partnership or S corporation
- 21 after reduction for nonpassive losses **or does business as a sole**

1 **proprietorship**, that portion of the taxpayer's income that [*meets the condi-*
2 *tions of subsection (6) of this section*] **is qualifying income** shall be taxed
3 at:

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

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

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

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

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

12 “(D) Eight percent of taxable income exceeding \$1 million but not ex-
13 ceeding \$2.5 million;

14 “(E) Nine percent of taxable income exceeding \$2.5 million but not ex-
15 ceeding \$5 million; and

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

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

19 “(4) A taxpayer shall use the subtractions, deductions or additions other-
20 wise allowed under this chapter in the calculation of income that is taxed
21 at the rates otherwise applicable under ORS 316.037. The only addition or
22 subtraction allowed in the calculation of [*nonpassive*] **qualifying** income for
23 which the taxpayer uses the reduced rates allowed under subsection (2)(b)
24 of this section shall be any depreciation adjustment directly related to the
25 partnership, [*or*] S corporation **or sole proprietorship**.

26 “(5) The election under subsection (2)(b) of this section shall be irrev-
27 ovable and shall be made on the taxpayer's original return. If the taxpayer
28 uses the reduced rates allowed under subsection (2)(b) of this section, the
29 calculation of income shall be substantiated on a form prescribed by the
30 Department of Revenue and filed with the taxpayer's tax return for the tax

1 year or at such other time and manner as the department may prescribe by
2 rule. A taxpayer who uses the reduced rates available under subsection (2)(b)
3 of this section may not join in the filing of a composite return under ORS
4 314.778.

5 “(6) The rates listed in subsection (2)(b) of this section apply to [*nonpas-*
6 *sive*] income attributable to a partnership, [*or*] S corporation **or sole**
7 **proprietorship** only if:

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

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

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

18 “(7) **Any personal income taxpayer that files in partnership form**
19 **and otherwise meets the conditions of subsection (6) of this section**
20 **may elect to use the reduced rates allowed under subsection (2)(b) of**
21 **this section.**

22 “[*(7)(a)*] **(8)(a)** A nonresident may apply the reduced rates allowed under
23 subsection (2)(b) of this section only to income earned in Oregon.

24 “(b) A part-year resident shall calculate the tax due using the reduced
25 rates allowed under subsection (2)(b) of this section by first applying those
26 rates to the taxpayer’s [*nonpassive*] **qualifying** income [*that meets the re-*
27 *quirements of subsection (6) of this section*], and then multiplying that amount
28 by the ratio of the taxpayer’s [*nonpassive*] income in Oregon divided by
29 [*nonpassive*] income from all sources.

30 “**SECTION 2. Section 3 of this 2018 special session Act is added to**

1 and made a part of ORS chapter 315.

2 **“SECTION 3. (1) As used in this section, ‘qualifying income’ has the**
3 **meaning given that term in ORS 316.043.**

4 **“(2) A credit shall be allowed against the taxes otherwise due under**
5 **ORS chapter 316 for qualifying income for which a taxpayer elects to**
6 **use the reduced rates of taxation allowed under ORS 316.043, if for the**
7 **tax year the taxpayer’s adjusted gross income does not exceed \$250,000.**
8 **The amount of the credit allowed for the tax year shall equal two**
9 **percent of qualifying income that does not exceed \$250,000.**

10 **“(3) The Department of Revenue may:**

11 **“(a) Adopt rules for carrying out the provisions of this section; and**

12 **“(b) Prescribe the form used to claim a credit and the information**
13 **required on the form.**

14 **“(4) In the case of a credit allowed under this section:**

15 **“(a) A nonresident shall be allowed the credit under this section in**
16 **the proportion provided in ORS 316.117.**

17 **“(b) If a change in the status of a taxpayer from resident to non-**
18 **resident or from nonresident to resident occurs, the credit allowed**
19 **under this section shall be determined in a manner consistent with**
20 **ORS 316.117.**

21 **“(c) If a change in the taxable year of a taxpayer occurs as de-**
22 **scribed in ORS 314.085, or if the department terminates the taxpayer’s**
23 **taxable year under ORS 314.440, the credit allowed under this section**
24 **shall be prorated or computed in a manner consistent with ORS**
25 **314.085.**

26 **“SECTION 4. Section 3 of this 2018 special session Act applies to tax**
27 **years beginning on or after January 1, 2018, and before January 1, 2024.**

28 **“SECTION 5. The amendments to ORS 316.043 by section 1 of this**
29 **2018 special session Act apply to tax years beginning on or after Jan-**
30 **uary 1, 2018.**

1 **“SECTION 6.** ORS 316.044 is amended to read:

2 “316.044. (1)(a) As soon as practicable, the Legislative Revenue Officer,
3 after consultation with the Department of Revenue, shall prepare estimates
4 of projected use by taxpayers of the reduced rates provided in ORS 316.043
5 (2). The estimates shall include the projected use of the reduced rates in tax
6 years beginning on or after January 1, 2015, and before January 1, 2017, and
7 in tax years beginning on or after January 1, 2019, and before January 1,
8 2021. The estimates shall express as a ratio the revenue loss anticipated as
9 a result of the reduced rates of taxation in ORS 316.043 (2), divided by
10 projected total income in this state, for those tax years.

11 “(b) Not later than July 1, 2018, the Legislative Revenue Officer shall
12 report to an interim committee of the Legislative Assembly related to reve-
13 nue regarding the use of the reduced rates provided in ORS 316.043 (2). The
14 report shall express as a ratio, for tax years beginning on or after January
15 1, 2015, and before January 1, 2017, the actual revenue loss resulting from
16 the allowance of reduced rates of taxation provided in ORS 316.043 (2) di-
17 vided by actual total income in this state for those tax years. If the ratio
18 exceeds the ratio calculated under paragraph (a) of this subsection by more
19 than 15 percent, the rates listed in ORS 316.043 (2) shall be proportionately
20 adjusted to achieve a ratio of approximately 105 percent of the ratio calcu-
21 lated in subsection (1)(a) of this section for tax years beginning on or after
22 January 1, 2015, and before January 1, 2017, but may in no event exceed 9.9
23 percent of taxable income or be reduced to less than the original rate pro-
24 vided in ORS 316.043 (2).

25 “(c) The adjusted rates provided under paragraph (b) of this subsection
26 shall apply to tax years beginning on or after January 1, 2019.

27 “(2)(a) Not later than July 1, 2022, the Legislative Revenue Officer shall
28 report to an interim committee of the Legislative Assembly related to reve-
29 nue regarding the use of the reduced rates provided in ORS 316.043 (2). The
30 report shall express as a ratio, for tax years beginning on or after January

1 1, 2019, and before January 1, 2021, the actual revenue loss resulting from
2 the allowance of reduced rates of taxation provided in ORS 316.043 (2) di-
3 vided by actual total income in this state for those tax years. If the ratio
4 exceeds the ratio included in the estimate required under subsection (1)(a)
5 of this section for tax years beginning on or after January 1, 2019, and before
6 January 1, 2021, by more than 25 percent, the rates listed in ORS 316.043 (2)
7 shall be proportionately adjusted to achieve a ratio of approximately 115
8 percent of the ratio calculated in subsection (1)(a) of this section for tax
9 years beginning on or after January 1, 2019, and before January 1, 2021. If
10 the ratio is less than 75 percent of the ratio included in the estimate required
11 under subsection (1)(a) of this section for tax years beginning on or after
12 January 1, 2019, and before January 1, 2021, the rates listed in ORS 316.043
13 (2) shall be proportionately adjusted to achieve a ratio of approximately 85
14 percent of the ratio calculated in subsection (1)(a) of this section for tax
15 years beginning on or after January 1, 2019, and before January 1, 2021. The
16 adjusted rates under this subsection may in no event exceed 9.9 percent of
17 taxable income or be reduced to lower than the original rate provided in ORS
18 316.043 (2).

19 “(b) The adjusted rates provided under paragraph (a) of this subsection
20 shall apply to tax years beginning on or after January 1, 2023.

21 **“(c) The actual revenue loss reported by the Legislative Revenue**
22 **Officer as required under paragraph (a) of this subsection may not be**
23 **calculated to include revenue loss attributable to:**

24 **“(A) The election of the reduced rates allowed under ORS 316.043**
25 **by sole proprietors; or**

26 **“(B) The allowance of the credit under section 3 of this 2018 special**
27 **session Act.**

28 **“SECTION 7. This 2018 special session Act takes effect on the 91st**
29 **day after the date on which the 2018 special session of the Seventy-**
30 **ninth Legislative Assembly adjourns sine die.”.**

