

Requested by Representative KENY-GUYER

**PROPOSED AMENDMENTS TO  
HOUSE BILL 4301**

1 On page 1 of the printed bill, line 2, after “316.043” insert “and section  
2 12, chapter 5, Oregon Laws 2013 (special session)”.

3 Delete lines 5 through 30 and delete page 2 and insert:

4 **“SECTION 1.** ORS 316.043 is amended to read:

5 “316.043. (1) As used in this section:

6 “(a) ‘Material participation’ has the meaning given that term in section  
7 469 of the Internal Revenue Code.

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

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

14 **“(d) ‘Qualifying income’ means a taxpayer’s net income that meets  
15 the conditions of subsection (6) of this section, as required to be re-  
16 ported on the taxpayer’s return, and that is computed by taking the  
17 sum of the taxpayer’s:**

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

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

20 “(2) If a taxpayer that meets the conditions of subsection (6) of this sec-  
21 tion has nonpassive income attributable to any partnership or S corporation

1 after reduction for nonpassive losses **or does business as a sole**  
2 **proprietorship**, that portion of the taxpayer's income that [*meets the condi-*  
3 *tions of subsection (6) of this section*] **is qualifying income** shall be taxed  
4 at:

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

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

7 “**(A) Five percent of the first \$50,000 of taxable income, or fraction**  
8 **thereof;**

9 “**(B) Six percent of taxable income exceeding \$50,000, but not ex-**  
10 **ceeding \$100,000; and**

11 “**(C) Seven percent of taxable income exceeding \$100,000, but not**  
12 **exceeding \$250,000.**

13 “[*(A) Seven percent of the first \$250,000 of taxable income, or fraction*  
14 *thereof;*]

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

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

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

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

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

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

27 “(4) A taxpayer shall use the subtractions, deductions or additions other-  
28 wise allowed under this chapter in the calculation of income that is taxed  
29 at the rates otherwise applicable under ORS 316.037. The only addition or  
30 subtraction allowed in the calculation of [*nonpassive*] **qualifying** income for

1 which the taxpayer uses the reduced rates allowed under subsection (2)(b)  
2 of this section shall be any depreciation adjustment directly related to the  
3 partnership, [or] S corporation **or sole proprietorship**.

4 “(5) The election under subsection (2)(b) of this section shall be irrev-  
5 ocable and shall be made on the taxpayer’s original return. If the taxpayer  
6 uses the reduced rates allowed under subsection (2)(b) of this section, the  
7 calculation of income shall be substantiated on a form prescribed by the  
8 Department of Revenue and filed with the taxpayer’s tax return for the tax  
9 year or at such other time and manner as the department may prescribe by  
10 rule. A taxpayer who uses the reduced rates available under subsection (2)(b)  
11 of this section may not join in the filing of a composite return under ORS  
12 314.778.

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

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

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

20 “(c) At least [*1,200*] **1,000** aggregate hours of work in Oregon are per-  
21 formed, by the close of the tax year for which the reduced rate is allowed,  
22 by employees who meet the requirements of paragraph (b) of this subsection  
23 and who are employed by the partnership, [or] S corporation **or sole**  
24 **proprietorship**; *and*[. *In determining whether this requirement is met, only*  
25 *hours worked in a week in which a worker works at least 30 hours may be*  
26 *considered.*]

27 “(d) **The taxpayer’s qualifying income does not exceed \$250,000.**

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

30 “(b) A part-year resident shall calculate the tax due using the reduced

1 rates allowed under subsection (2)(b) of this section by first applying those  
2 rates to the taxpayer's [*nonpassive*] **qualifying** income [*that meets the re-*  
3 *quirements of subsection (6) of this section*], and then multiplying that amount  
4 by the ratio of the taxpayer's [*nonpassive*] income in Oregon divided by  
5 [*nonpassive*] income from all sources.

6 **“SECTION 2.** Section 12, chapter 5, Oregon Laws 2013 (special session),  
7 is amended to read:

8 **“Sec. 12. (1)** [*Section 11 of this 2013 special session Act*] **ORS 316.043**  
9 applies to tax years beginning on or after January 1, 2015, **and before**  
10 **January 1, 2021.**

11 **“(2)** The amendments to ORS 316.043 by section 1 of this 2018 special  
12 session Act apply to tax years beginning on or after January 1, 2018,  
13 **and before January 1, 2021.**

14 **“SECTION 3. (1)** The Legislative Revenue Officer, in consultation  
15 with the Department of Revenue and the Employment Department,  
16 shall submit the report described in subsection (2) of this section, in  
17 the manner required under ORS 192.245, to the interim committees of  
18 the Legislative Assembly related to revenue, on or before October 1,  
19 **2019.**

20 **“(2)** The report required under this section must address the use  
21 and impact of the incentive provided under ORS 316.043, as amended  
22 by section 1 of this 2018 special session Act, including, but not limited  
23 to, whether the incentive increases employment, traded sector busi-  
24 ness activity and wages and benefits of employees.

25 **“SECTION 4.** This 2018 special session Act takes effect on the 91st  
26 day after the date on which the 2018 special session of the Seventy-  
27 ninth Legislative Assembly adjourns sine die.”.

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