

SB 211 -1

Description of Changes



1

Two Changes to Oregon's Reduced Rates for Applicable Pass-Through and Sole Proprietorship Income

- 1) Lower the point at which 9.9% tax rate becomes applicable for qualified income
- 2) Specifies that qualifying income does not include income that is attributable to:
 - a. A specified service trade or business as defined in section 199A(d)(2) of the Internal Revenue Code, or
 - b. The trade or business of performing services as an employee, for the purposes of section 199A(d)(2)

Oregon Pass-Through & Sole Proprietorship Reduced Rate Policy

- The policy objective is to provide a more favorable rate structure for business income earned by taxpayers who actively manage their own businesses ORS 316.043 & 316.044 – HB 3601 (2013 S.S.), HB 4301 (2018 S.S.)
- Taxpayers can have income from partnerships, S-corporations, sole proprietorships and LLCs taxed at lower marginal rates
- Policy is NOT intended to benefit passive investment or rental income
- Primary requirement is the taxpayer must “materially participate” in the business
 - “Taxpayer shall be treated as materially participating in an activity only if the taxpayer is involved in the operations of the activity on a basis which is: regular, continuous, and substantial. (IRC 469)
- Have at least one full-time, non-investor employee
- Qualifying employees must work at least 1,200 hours in Oregon

Non-Passive Income Tax Rates	
Taxable Income (\$)	Tax Rate
≤ \$250,000	7.0%
\$250,001 to \$500,000	7.2%
\$500,001 to \$1 Million	7.6%
\$1 Million to \$2.5 Million	8.0%
\$2.5 Million to \$5 Million	9.0%
Over \$5 Million	9.9%

Oregon Reduced Rate Policy

4

Preliminary Tax Year 2016 & 2017 Data, Full-Year Filers

Revenue Impact (\$M)			
Income	TY 2016	TY 2017	Difference
\$0 - \$50k	-\$0.1	-\$0.1	\$0.0
\$50k-\$70k	-\$0.3	-\$0.2	\$0.0
\$70k-\$100k	-\$0.9	-\$0.8	\$0.1
\$100k-\$200k	-\$6.2	-\$5.7	\$0.5
\$200k-\$500k	-\$22.2	-\$22.5	-\$0.3
> \$500k	-\$65.7	-\$66.6	-\$0.9
Total	-\$95.3	-\$95.9	-\$0.6

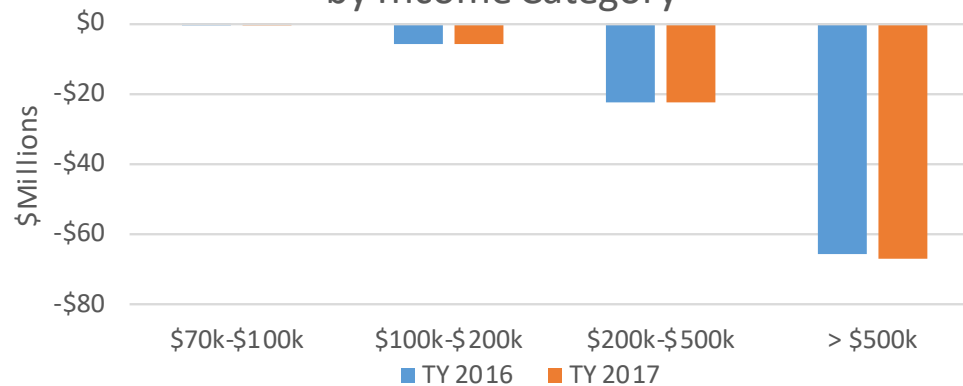
Number of Claimants			
Income	TY 2016	TY 2017	% Ch.
\$0 - \$50k	761	527	-31%
\$50k-\$70k	908	812	-11%
\$70k-\$100k	1,953	1,675	-14%
\$100k-\$200k	6,722	6,165	-8%
\$200k-\$500k	7,633	7,569	-1%
> \$500k	4,471	4,532	1%
Total	22,448	21,289	-5%

Means (\$) -\$4,244 -\$4,504

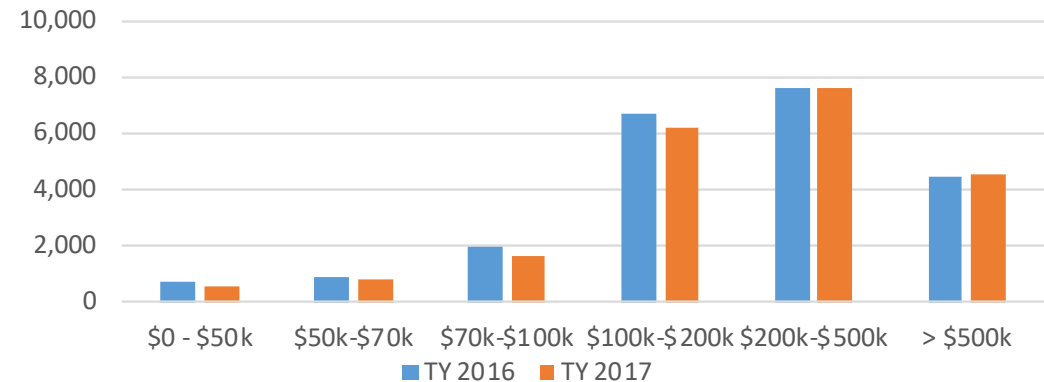
Source: DOR - Research, Personal Income Tax Returns

Income: Refers to total income | 2017 Full year filers | Totals may not sum due to disclosure requirements

Estimated Revenue Impact (Full Year Filers) by Income Category



Claimants (Full Year Filers) by Income Category





5

Rate Adjustment

Tax Rate Adjustment

Non-Passive Income Tax Rates	
Taxable Income (\$)	Tax Rate
≤ \$250,000	7.0%
\$250,001 to \$500,000	7.2%
\$500,001 to \$1 Million	7.6%
\$1 Million to \$2.5 Million	8.0%
\$2.5 Million to \$5 Million	9.0%
Over \$5 Million	9.9%

SB 211 -1	
Taxable Income (\$)	Tax Rate
≤ \$250,000	7.0%
\$250,001 to \$415,000	7.2%
Over \$415,000	9.9%

Distribution of Qualifying Income by Non-Passive Inc. Category - TY 2017

Non-Passive Income Category	Pct. of Total Qualifying Income
≤ 25K	1%
25 - 50	3%
50 - 75	3%
75 - 100	3%
100 - 200	12%
200 - 250	5%
250 - 300	5%
300 - 400	7%
400 - 500	6%
500 - 600	5%
600 - 700	4%
700 - 800	4%
800 - 900	3%
900 - 1M	2%
1 - 2M	13%
2 - 3M	7%
3 - 4M	3%
4 - 5M	2%
5M+	12%
≤ 415K	40%

Note: Estimated distribution prepared using preliminary e-filed TY 2017 tax returns

Specified Service Trade or Business Exclusion

IRC Definitions

8

IRC 199A(d)(2)

(2) SPECIFIED SERVICE TRADE OR BUSINESS The term “[specified service trade or business](#)” means any [trade or business](#)—

(A)

which is described in [section 1202\(e\)\(3\)\(A\)](#) (applied without regard to the words “engineering, architecture,”) or which would be so described if the term “[employees](#) or [owners](#)” were substituted for “[employees](#)” therein, or

(B)

which involves the performance of services that consist of investing and investment management, trading, or dealing in [securities](#) (as defined in [section 475\(c\)\(2\)](#)), [partnership](#) interests, or commodities (as defined in [section 475\(e\)\(2\)](#)).

Section 1202(e)(3)(A)

(A)

any [trade or business](#) involving the performance of services in the fields of health, law, engineering, architecture, accounting, actuarial science, performing arts, consulting, athletics, financial services, brokerage services, or any [trade or business](#) where the principal asset of such [trade or business](#) is the reputation or skill of 1 or more of its [employees](#),

Trade or Business Exclusion

- Green shaded sectors align with IRC definition of specified service trade or business
- Entire sector not necessarily excluded from Oregon reduced rate policy
- Estimate that about 20% of Oregon qualified reduced rate pass through income is derived from specified service trade or business

Approximate Amount of Qualifying Net Pass Through Entity (PTE) Income, by Sector - TY 2017

Sector Code	-----Sector Description-----	Pct. of Income
11	Agriculture, Forestry, Fishing and Hunting	3%
21	Mining, Quarrying, and Oil and Gas Extraction	0%
22	Utilities	0%
23	Construction	17%
31-33	Manufacturing	12%
42	Wholesale Trade	8%
44-45	Retail Trade	9%
48-49	Transportation and Warehousing	1%
51	Information	1%
52	Finance and Insurance	5%
53	Real Estate and Rental and Leasing	5%
54	Professional, Scientific, and Technical Services	14%
55	Management of Companies and Enterprises	1%
56	Adm. and Support and Waste Mgmt.	2%
61	Educational Services	0%
62	Health Care and Social Assistance	11%
71	Arts, Entertainment, and Recreation	1%
72	Accommodation and Food Services	5%
81	Other Services (except Public Administration)	2%
Other	Other	3%

Note: Estimate of sector distribution based on preliminary e-filed tax year 2017 tax returns. TY 2017 excludes sole proprietors added by 2018 special session.

Green shaded rows highlight sectors containing specified service trade or businesses. Specified service trade or businesses estimated to represent about 20% of total PTE reduced rate benefit.

qualified property from the qualified trade or business. The partial or full reduction to QBI is determined by your taxable income. If your taxable income (before the QBI deduction) is:

- At or below the threshold, you don't need to reduce your QBI,
- Above the threshold but below the phase in range, the reduction is phased-in,
- Above the threshold and phase in range, the full reduction applies.

In addition, if you are a patron of an agricultural or horticultural cooperative you must reduce your cooperative QBI by the lesser of:

- 9% of the QBI allocable to qualified payments, or
- 50% of W-2 wages from the trade or business allocable to the qualified payments.

Determining your qualified trades or businesses. Your qualified trades and businesses include your section 162 trades or businesses, other than trades or businesses conducted through a C corporation, W-2 wages earned as an employee, and specified service trades or businesses.

In general, to be engaged in a trade or business, you must be involved in the activity with continuity and regularity and your primary purpose for engaging in the activity must be for income or profit. If you own an interest in a pass-through entity, the trade or business determination is made at that entity's level.

The ownership and rental of real property may constitute a trade or business. Notice 2019-07 provides a safe harbor under which rental real estate enterprise will be treated as a trade or business for purposes of the QBI deduction. For more information, on the safe harbor see Notice 2019-07. Rental real estate that does not meet the requirements of the safe harbor may still be treated as a trade or business for purposes of the QBI deduction if it is a section 162 trade or business.

In addition, the rental or licensing of property to a commonly controlled trade or business operated by an individual or a pass-through entity is considered a trade or business under section 199A.

Services performed as an employee excluded from qualified trades or businesses.

The trade or business of performing services as an employee is not a trade or business for purposes of section 199A. Therefore, any amounts reported in box 1 of Form W-2, other than amounts reported in box 1 where the "Statutory Employee" box in box 13 is checked, are not QBI. If you were previously an employee of a business and continue to provide substantially the same services to that business after you are no longer treated as an employee, there is a presumption that you are providing services as an employee for purposes of section 199A for the 3-year period after ceasing to be an employee. You may have to rebut this presumption upon notice from the IRS by providing records such as contracts or partnership agreements that corroborate your status as a non-employee. For more information on whether you are an employee or an independent contractor, see Pub. 15-A, Employer's Supplemental Tax Guide, and Pub. 1779, Independent Contractor or Employee.

Specified service trade or business excluded from your qualified trades or businesses. Specified service trades or businesses generally are excluded from the definition of qualified trade or business income if the taxpayer's taxable income exceeds the threshold. Therefore, no QBI, W-2 wages, or UBIAs of the qualified property from the specified trade or business are taken into account in figuring your QBI deduction. If the specified service trade or business is conducted by your pass-through entity, the same limitation applies to the pass-through items regardless of whether you are a passive owner or materially participate in the business.

Exception 1: If your taxable income before the QBI deduction isn't more than \$157,500 (\$315,000 if married filing jointly), your specified service trade or business is a qualified trade or business, and thus may generate income eligible for the QBI deduction.

Exception 2: If your taxable income before the QBI deduction is more than \$157,500 but not \$207,500 (\$315,000 and \$415,000 if married filing jointly), an applicable percentage of your specified service trade or business is treated as a qualified trade or business. For more information on the applicable percentage and this exception, see the instructions for Schedule A in this publication.

A specified service trade or business is any trade or business providing services in the fields of:

- 62 • Health, including physicians, nurses, dentists, veterinarians, physical therapists, psychologists, and other similar healthcare professionals. However, it excludes services not directly related to a medical services field, such as the operation of health clubs or spas; payment processing; or the research, testing, manufacture, and sale of pharmaceuticals or medical devices;
- 54 • Law, including lawyers, paralegals, legal arbitrators, mediators, and similar professionals. However, it excludes services that do not require skills unique to the field of law such as services by printers, delivery services, or stenography services;
- 54 • Accounting, including accountants, enrolled agents, return preparers, financial auditors, and similar professionals;
- 54 • Actuarial science, including actuaries, and similar professionals;
- 71 • Performing arts, including actors, directors, singers, musicians, entertainers, and similar professionals. However, it excludes services that don't require skills unique to the creation of performing arts, such as the maintenance and operation of equipment or facilities for use in the performing arts or the provision of services by persons who broadcast video or audio of performing arts to the public;
- 54 • Consulting, including providing advice and counsel with the intention of influencing decisions made by a government or governmental agency and all attempts to influence legislators and other government officials on behalf of a client by lobbyists, and other similar professionals. However, it excludes the performance of services other than advice or counsel, such as sales, training or educational courses. It also excludes embedded or ancillary services that

are otherwise not SSTBs, if there is no separate payment for the services;

- 71 • Athletics, including athletes, coaches, and managers in sports such as baseball, basketball, football, soccer, hockey, martial arts, boxing, bowling, tennis, golf, snowboarding, track and field, billiards, racing, and other athletic performance. However, it excludes services that do not require skills unique to athletic competition, such as the maintenance and operation of equipment or facilities for use in athletic events or the provision of services by persons who broadcast video or audio of athletic events to the public;

- 52 • Financial services, including managing wealth, advising clients with respect to finances, developing retirement plans, developing wealth transition plans, the provision of advisory and other similar services regarding valuations, mergers, acquisitions, dispositions, restructuring (including in title 11 or similar cases), and raising financial capital by underwriting, or acting as a client's agent in the issuance of securities, and similar services. This includes services provided by financial advisors, investment bankers, wealth planners, retirement advisors, and other similar professionals. However, it excludes taking deposits or making loans, but does include arrange lending transactions between a lender and borrower;
- 52 • Brokerage services, including services in which a person arranges transactions between a buyer and a seller with respect to securities for a commission or fee including services provided by stock brokers and other similar professionals. However, it excludes services provided by real estate agents and brokers, or insurance agents and brokers;

- 52 • Investing and investment management, in which a fee is received for providing investing, asset management, or investment management services, including providing advice with respect to buying and selling investments. However, it excludes the service of directly managing real property;
- 52 • Trading, including the trade or business of trading in securities (as defined in section 475(c)(2)), commodities (as defined in section 475(e)(2)), or partnership interests;
- 52 • Dealing in securities, including dealing in securities (as defined in section 475(c)(2)), commodities (as defined in section 475(e)(2)), or partnership interests;
- Any trade or business where the principal asset is the reputation or skill of one or more of its employees, as demonstrated by:

- Receiving fees, compensation, or other income for endorsing products or services;
- Licensing or receiving fees, compensation or other income for the use of an individual's image, likeness, name, signature, voice, trademark, or any other symbols associated with the individual's identity; or
- Receiving fees, compensation, or other income for appearing at an event or on radio, television, or another media format.