

House Bill 2153

Introduced and printed pursuant to House Rule 12.00. Pre-session filed (at the request of House Interim Committee on Revenue)

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**.

Reduces amount of income eligible for elective reduced personal income tax rate allowed for certain pass-through income. Requires that income must also be eligible for federal deduction available for pass-through income in order to use reduced rates.

Applies to tax years beginning on or after January 1, 2019.

Takes effect on 91st day following adjournment sine die.

A BILL FOR AN ACT

1 Relating to tax treatment of pass-through income; creating new provisions; amending ORS 316.043;
2 and prescribing an effective date.

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

4 **SECTION 1.** ORS 316.043, as amended by section 1, chapter 1, Oregon Laws 2018 (special ses-
5 sion), 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)(A) "Qualifying income" means a taxpayer's net income that meets the conditions of sub-
15 section (6) of this section, as reported on the taxpayer's return, and that is computed by taking the
16 sum of the taxpayer's:

17 [(A)] (i) Nonpassive income after reduction for nonpassive losses; and

18 [(B)] (ii) Business income or loss as a sole proprietor.

19 **(B) "Qualifying income" does not include income in excess of:**

20 **(i) \$415,000 for joint return filers, a head of household or a surviving spouse; or**

21 **(ii) \$207,500 for all other taxpayers.**

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

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

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

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

29 **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 (B) Seven and two-tenths percent of taxable income exceeding \$250,000 but not exceeding
 2 [\$500,000;] **\$415,000; and**

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

5 [(D) *Eight percent of taxable income exceeding \$1 million but not exceeding \$2.5 million;*]

6 [(E) *Nine percent of taxable income exceeding \$2.5 million but not exceeding \$5 million; and*]

7 [(F)] (C) Nine and nine-tenths percent of taxable income exceeding [\$5 million] **\$415,000.**

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

10 (4) A taxpayer shall use the subtractions, deductions or additions otherwise allowed under this
 11 chapter in the calculation of income that is taxed at the rates otherwise applicable under ORS
 12 316.037. The only addition or subtraction allowed in the calculation of qualifying income for which
 13 the taxpayer uses the reduced rates allowed under subsection (2)(b) of this section shall be any de-
 14 preciation adjustment directly related to the partnership, S corporation or sole proprietorship.

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

22 (6) The rates listed in subsection (2)(b) of this section apply to income attributable to a part-
 23 nership, S corporation or sole proprietorship only if:

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

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

28 (c) **The taxpayer is eligible to claim a deduction on the taxpayer's federal income tax**
 29 **return under section 199A(a) of the Internal Revenue Code for the qualifying income; and**

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

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

37 (b) A part-year resident shall calculate the tax due using the reduced rates allowed under sub-
 38 section (2)(b) of this section by first applying those rates to the taxpayer's qualifying income, and
 39 then multiplying that amount by the ratio of the taxpayer's income in Oregon divided by income
 40 from all sources.

41 **SECTION 2. The amendments to ORS 316.043 by section 1 of this 2019 Act apply to tax**
 42 **years beginning on or after January 1, 2019.**

43 **SECTION 3. This 2019 Act takes effect on the 91st day after the date on which the 2019**
 44 **regular session of the Eightieth Legislative Assembly adjourns sine die.**