House Bill 3358

Sponsored by Representative PHAM

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.

Disallows elective reduced rates on certain pass-through income above threshold amount. Repeals provision for future adjustment of elective rates. Applies to tax years beginning on or after January 1, 2021. Takes effect on 91st day following adjournment sine die.

A BILL FOR AN ACT

Relating to rates of taxation on pass-through income; creating new provisions; amending ORS 316.043; repealing ORS 316.044; and prescribing an effective date.

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

SECTION 1. ORS 316.043 is amended to read:

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

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

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

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

(d) “Qualifying income” means a taxpayer's net income that meets the conditions of subsection [(6)] (5) of this section, as reported on the taxpayer's return, and that is computed by taking the sum of the taxpayer's:

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

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

(2) If a taxpayer that meets the conditions of subsection [(6)] (5) of this section has nonpassive income attributable to any partnership or S corporation after reduction for nonpassive losses or does business as a sole proprietorship, that portion of the taxpayer's income that is qualifying income shall be taxed at:

(a) The rate applicable under ORS 316.037; or

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

(A) A rate of seven percent of the first [$250,000] $100,000 of taxable income, or fraction thereof; and

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

[(C) Seven and six-tenths percent of taxable income exceeding $500,000 but not exceeding $1 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.

LC 3656
[(D) Eight percent of taxable income exceeding $1 million but not exceeding $2.5 million;]

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

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

(B) The rates applicable under ORS 316.037, for taxable income exceeding $100,000.

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

[(4)(b) The rates] The rate] listed in subsection (2)(b) of this section [apply applies] to income attributable to a partnership, S corporation or sole proprietorship only if:

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

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

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

[(5)(a) A nonresident may apply the reduced [rates] rate allowed under subsection (2)(b) of this section only to income earned in Oregon.]

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

SECTION 2. ORS 316.044 is repealed.

SECTION 3. The amendments to ORS 316.043 by section 1 of this 2021 Act and the repeal of ORS 316.044 by section 2 of this 2021 Act apply to tax years beginning on or after January 1, 2021.

SECTION 4. This 2021 Act takes effect on the 91st day after the date on which the 2021 regular session of the Eighty-first Legislative Assembly adjourns sine die.