

# Enrolled Senate Bill 139

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CHAPTER .....

## AN ACT

Relating to taxation; creating new provisions; amending ORS 316.043; 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:

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)] **subsections (6) to (10)** 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)] **subsections (6) to (10)** 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) Seven percent of the first [\$250,000] **\$500,000** of taxable income, or fraction thereof;

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

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

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

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

and

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

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

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

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

*[(6) The rates listed in subsection (2)(b) of this section apply 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.]*

**(6) The rates listed in subsection (2)(b) of this section apply to income attributable to a partnership, S corporation or sole proprietorship only if:**

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

**(b) For a partnership or S corporation, the partnership or S corporation has ordinary business income not in excess of \$5 million for the tax year; and**

**(c) For a partnership or S corporation, the trade or business complies with the employee ratio requirements of subsections (8) and (9) of this section or with the income distribution requirements of subsection (10) of this section.**

**(7) To qualify under this section, a partnership, S corporation or sole proprietorship:**

**(a) Must employ 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;**

**(b) Must have at least 1,200 aggregate hours of work in Oregon performed, by the close of the tax year for which the reduced rate is allowed, by persons who meet the requirements of paragraph (a) of this subsection and who are employed by the partnership, S corporation or sole proprietorship; and**

**(c) May rely only on hours worked in a week in which a worker works at least 30 hours, in determining whether the requirement in paragraph (b) of this subsection is met.**

**(8) If the ordinary business income of a partnership or S corporation exceeds \$250,000, but does not exceed \$500,000, for every owner, member or limited partner, the partnership or S corporation must, through the employment of persons who meet the requirements of subsection (7)(a) to (c) of this section:**

**(a) Employ in Oregon at least one person who is not an owner, member or limited partner; and**

**(b) Have at least 1,200 aggregate hours of work in Oregon performed by employees, while considering not more than 1,200 hours performed by any one employee in that sum.**

**(9) Unless the income distribution requirements of subsection (10) of this section are met, a partnership or S corporation must, through the employment of persons who meet the**

requirements of subsection (7)(a) to (c) of this section, obtain the following ratios of owners, members or limited partners to employees:

(a) If the ordinary business income of a partnership or S corporation exceeds \$500,000, but does not exceed \$1 million, for every owner, member or limited partner, the partnership or S corporation must, by the close of the tax year:

(A) Employ in Oregon at least two persons who are not owners, members or limited partners; and

(B) Have at least 2,400 aggregate hours of work in Oregon performed by employees, while considering not more than 1,200 hours performed by any one employee in that sum.

(b) If the ordinary business income of a partnership or S corporation exceeds \$1 million, but does not exceed \$2.5 million, for every owner, member or limited partner, the partnership or S corporation must, by the close of the tax year:

(A) Employ in Oregon at least four persons who are not owners, members or limited partners; and

(B) Have at least 4,800 aggregate hours of work in Oregon performed by employees, while considering not more than 1,200 hours performed by any one employee in that sum.

(c) If the ordinary business income of a partnership or S corporation exceeds \$2.5 million, but does not exceed \$5 million, for every owner, member or limited partner, the partnership or S corporation must, by the close of the tax year:

(A) Employ in Oregon at least 10 persons who are not owners, members or limited partners; and

(B) Have at least 12,000 aggregate hours of work in Oregon performed by employees, while considering not more than 1,200 hours performed by any one employee in that sum.

(10) Unless the employee ratio requirements of subsection (9) of this section are met, if the ordinary business income of the partnership or S corporation exceeds \$250,000, the distributions of income of a partnership or S corporation, as a percentage of ordinary business income, may not exceed 25 percent. This percentage shall be computed based on the total distributions and total ordinary business income for the current tax year, summed with up to the two most recent tax years, or as many tax years for which the partnership or S corporation has been operating, if fewer than two full years. An amount less than zero in any year shall be treated as zero for that year.

[(7)(a)] (11)(a) A nonresident may apply the reduced rates 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 allowed under subsection (2)(b) of this section by first applying those rates 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.** The amendments to ORS 316.043 by section 1 of this 2021 Act apply to tax years beginning on or after January 1, 2021.

**SECTION 3.** 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.

**Passed by Senate June 17, 2021**

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Lori L. Brocker, Secretary of Senate

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Peter Courtney, President of Senate

**Passed by House June 24, 2021**

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Tina Kotek, Speaker of House

**Received by Governor:**

.....M,....., 2021

**Approved:**

.....M,....., 2021

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Kate Brown, Governor

**Filed in Office of Secretary of State:**

.....M,....., 2021

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Shemia Fagan, Secretary of State