

B-Engrossed Senate Bill 727

Ordered by the House June 24
Including Senate Amendments dated June 15 and House Amendments
dated June 24

Sponsored by COMMITTEE ON FINANCE AND 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.

Establishes elective entity-level, pass-through business alternative income tax. Imposes tax based on sum of members' shares of distributive proceeds. Transfers proceeds of tax to General Fund. Creates refundable personal income tax credit allowable to members of pass-through entity that elects to pay entity level tax. Allows credit in amount of member's pro rata share of entity-level tax paid.

Applies to tax years beginning on or after January 1, 2022, and before January 1, 2024.

Repeals entity-level tax and related personal income tax credit. Becomes operative upon repeal of federal provision limiting personal income tax deduction for state and local taxes paid.

Takes effect on 91st day following adjournment sine die.

A BILL FOR AN ACT

1
2 Relating to taxation; creating new provisions; amending ORS 316.502; and prescribing an effective
3 date.

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

5 **SECTION 1. Sections 2 to 6 of this 2021 Act are added to and made a part of ORS chapter**
6 **314.**

7 **SECTION 2. As used in sections 2 to 6 of this 2021 Act:**

8 (1) "Distributive proceeds" means the net income, dividends, royalties, interest, rents,
9 guaranteed payments and gains of a pass-through entity, derived from or connected with
10 sources within this state.

11 (2) "Member" means a shareholder of an S corporation, a partner in a general, limited
12 or limited liability partnership or a member of a limited liability company.

13 (3) "Partnership" means a syndicate, group, pool, joint venture or other unincorporated
14 organization, through or by means of which any business, financial operation or venture is
15 carried on in this state.

16 (4) "Pass-through entity" means a partnership or S corporation or a limited liability
17 company electing to be treated as a partnership or S corporation.

18 (5) "Share of distributive proceeds" means the portion of distributive proceeds attribut-
19 able to a member of a pass-through entity in a tax year.

20 **SECTION 3. (1) A pass-through entity may elect to be liable for and pay a pass-through**
21 **business alternative income tax if all members of the pass-through entity are:**

22 (a) Individuals subject to the personal income tax imposed under ORS chapter 316; or

23 (b) Entities that are pass-through entities owned entirely by individuals subject to the

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 personal income tax imposed under ORS chapter 316.

2 (2) The election to pay the pass-through business alternative income tax is available if
3 consent is given by all members of the electing pass-through entity who are members at the
4 time the election is filed or is made by any officer, manager or member of the electing
5 pass-through entity who is authorized, under law or the entity's organizational documents,
6 to make the election and who represents to having such authorization under penalties of
7 perjury. The election shall be made annually on or before the due date, including extensions,
8 of the pass-through entity's return, in the form and manner prescribed by the Department
9 of Revenue. The election may not be made retroactively. The members of a pass-through
10 entity may revoke an election under this section for a tax year only on or before the due date
11 of the pass-through entity's return for that tax year, and only if the revocation is agreed to
12 by all members who are members at the time of the revocation.

13 (3) In determining the sum of distributive proceeds and computing the tax under this
14 section, a pass-through entity shall add back any amount of Oregon tax imposed under this
15 chapter and deducted by the pass-through entity at the entity level for federal income tax
16 purposes under section 164 of the Internal Revenue Code.

17 (4) Each pass-through entity that makes an election for a tax year pursuant to this sec-
18 tion shall annually report to each of its members, for the tax year, the member's share of
19 distributive proceeds and share of tax paid under this section and eligible for the credit al-
20 lowed under section 8 of this 2021 Act.

21 (5) The tax imposed on a pass-through entity pursuant to this section shall be determined
22 with respect to the sum of each member's share of distributive proceeds attributable to the
23 pass-through entity for the tax year.

24 (6) The rate of the tax imposed by and computed under this section is:

25 (a) Nine percent of the first \$250,000, or fraction thereof, of the sum of distributive pro-
26 ceeds; and

27 (b) Nine and nine-tenths percent of any amount of distributive proceeds in excess of
28 \$250,000.

29 (7) The amount of pass-through business alternative income tax due from a pass-through
30 entity in a tax year shall be exclusive of any amount of tax due and paid by the pass-through
31 entity under this chapter, except as otherwise provided in sections 2 to 6 of this 2021 Act.

32 (8) Pass-through entities that have made an election under this section shall file an en-
33 tity tax return. The return shall be accompanied by payment and shall be due on the date
34 applicable to returns due under ORS chapter 316, as provided in ORS 314.385.

35 **SECTION 3a.** The Department of Revenue may develop and implement a system providing
36 for the filing by electronic means of returns required under section 3 of this 2021 Act.

37 **SECTION 4.** Except as otherwise provided in sections 2 to 6 of this 2021 Act or where the
38 context requires otherwise, the provisions of ORS chapters 305 and 314 as to the audit and
39 examination of returns, periods of limitation, determinations of and notices of deficiencies,
40 assessments, collections, liens, delinquencies, claims for refund and refunds, conferences,
41 appeals to the Oregon Tax Court, stays of collection pending appeal, confidentiality of re-
42 turns and the related penalties, and the related procedures, apply to the determinations of
43 taxes, penalties and interest under sections 2 to 6 of this 2021 Act.

44 **SECTION 5.** (1) The Department of Revenue shall administer and enforce sections 2 to 6
45 of this 2021 Act.

1 (2) The department may adopt or establish rules and procedures that the department
2 considers necessary or appropriate for the implementation, administration and enforcement
3 of sections 2 to 6 of this 2021 Act and that are consistent with sections 2 to 6 of this 2021
4 Act.

5 **SECTION 6.** The net revenue from the tax imposed by sections 2 to 6 of this 2021 Act,
6 after deducting refunds, shall be paid over to the State Treasurer and held in the General
7 Fund as miscellaneous receipts available generally to meet any expense or obligation of the
8 State of Oregon lawfully incurred.

9 **SECTION 7.** Section 8 of this 2021 Act is added to and made a part of ORS chapter 315.

10 **SECTION 8.** (1) If a pass-through entity, as defined in section 2 of this 2021 Act, elects
11 to owe and pay the pass-through business alternative income tax determined under section
12 3 of this 2021 Act, a taxpayer that is a member of the pass-through entity shall be allowed
13 a credit against the taxes that are otherwise due under ORS chapter 316. For each pass-
14 through entity of which the taxpayer is a member, the credit allowed under this section shall
15 equal the member's pro rata share of the tax paid for the tax year under section 3 of this
16 2021 Act.

17 (2) If the amount allowable as a credit under this section, when added to the sum of the
18 amounts allowable as payment of tax under ORS 316.187 or 316.583, other tax prepayment
19 amounts and other refundable credit amounts, exceeds the taxes imposed by ORS chapters
20 314 and 316 for the tax year after application of any nonrefundable credits allowable for
21 purposes of ORS chapter 316 for the tax year, the amount of the excess shall be refunded to
22 the taxpayer as provided in ORS 316.502.

23 **SECTION 9.** ORS 316.502 is amended to read:

24 316.502. (1) The net revenue from the tax imposed by this chapter, after deducting refunds and
25 amounts described in ORS 285B.630 and 285C.635, shall be paid over to the State Treasurer and held
26 in the General Fund as miscellaneous receipts available generally to meet any expense or obligation
27 of the State of Oregon lawfully incurred.

28 (2) A working balance of unreceipted revenue from the tax imposed by this chapter may be re-
29 tained for the payment of refunds, but such working balance shall not at the close of any fiscal year
30 exceed the sum of \$1 million.

31 (3) Moneys are continuously appropriated to the Department of Revenue to make:

32 (a) The refunds authorized under subsection (2) of this section; and

33 (b) The refund payments in excess of tax liability authorized under ORS 315.174, 315.262, 315.264
34 and 315.266 and section 17, chapter 906, Oregon Laws 2007, and section 3 of this 2021 Act.

35 **SECTION 10.** Sections 3 and 8 of this 2021 Act apply to tax years beginning on or after
36 January 1, 2022, and before January 1, 2024.

37 **SECTION 11.** Sections 3 and 8 of this 2021 Act are repealed.

38 **SECTION 12.** The repeal of sections 3 and 8 of this 2021 Act by section 11 of this 2021
39 Act applies to any tax year that begins on or after January 1, 2022, and before January 1,
40 2024, and to which section 164(b)(6) of the Internal Revenue Code is not applicable.

41 **SECTION 13.** The repeal of sections 3 and 8 of this 2021 Act by section 11 of this 2021
42 Act becomes operative on the date on which section 164(b)(6) of the Internal Revenue Code
43 is repealed.

44 **SECTION 14.** This 2021 Act takes effect on the 91st day after the date on which the 2021
45 regular session of the Eighty-first Legislative Assembly adjourns sine die.

