

A-Engrossed
Senate Bill 139

Ordered by the Senate June 15
Including Senate Amendments dated June 15

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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.

Reduces [*amount of income eligible for*] elective reduced personal income tax [*rate*] **rates** allowed for certain pass-through income **by modifying income brackets**. [*Excludes income attributable to certain types of trade or business from eligibility for reduced rate.*] **Conditions allowance of rates on partnership or S corporation meeting either requirement of ratio of nonowner employees to owners or of percentage limitation on distributions, based on ordinary business income of partnership or S corporation. Exempts entity with ordinary business income not exceeding \$250,000.**

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

1
2 Relating to taxation; creating new provisions; amending ORS 316.043; and prescribing an effective
3 date.

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

5 **SECTION 1.** ORS 316.043 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) "Qualifying income" means a taxpayer's net income that meets the conditions of [*subsection*
15 (6)] **subsections (6) to (10)** of this section, as reported on the taxpayer's return, and that is com-
16 puted by taking the sum of the taxpayer's:

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

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

19 (2) If a taxpayer that meets the conditions of [*subsection (6)*] **subsections (6) to (10)** of this
20 section has nonpassive income attributable to any partnership or S corporation after reduction for
21 nonpassive losses or does business as a sole proprietorship, that portion of the taxpayer's income
22 that is qualifying income shall be taxed at:

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

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

2 (A) Seven percent of the first ~~[\$250,000]~~ **\$500,000** of taxable income, or fraction thereof;

3 ~~[(B) Seven and two-tenths percent of taxable income exceeding \$250,000 but not exceeding~~
4 ~~\$500,000;]~~

5 ~~[(C)]~~ **(B)** ~~[Seven and six-tenths]~~ **Seven and one-half** percent of taxable income exceeding
6 \$500,000 but not exceeding \$1 million;

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

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

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

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

12 (4) A taxpayer shall use the subtractions, deductions or additions otherwise allowed under this
13 chapter in the calculation of income that is taxed at the rates otherwise applicable under ORS
14 316.037. The only addition or subtraction allowed in the calculation of qualifying income for which
15 the taxpayer uses the reduced rates allowed under subsection (2)(b) of this section shall be any de-
16preciation adjustment directly related to the partnership, S corporation or sole proprietorship.

17 (5) The election under subsection (2)(b) of this section shall be irrevocable and shall be made
18 on the taxpayer's original return. If the taxpayer uses the reduced rates allowed under subsection
19 (2)(b) of this section, the calculation of income shall be substantiated on a form prescribed by the
20 Department of Revenue and filed with the taxpayer's tax return for the tax year or at such other
21 time and manner as the department may prescribe by rule. A taxpayer who uses the reduced rates
22 available under subsection (2)(b) of this section may not join in the filing of a composite return un-
23der ORS 314.778.

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

26 ~~[(a) The taxpayer materially participates in the trade or business;]~~

27 ~~[(b) The partnership, S corporation or sole proprietorship employs at least one person who is not~~
28 ~~an owner, member or limited partner of the partnership or S corporation or who is not the sole pro-~~
29 ~~prietor; and]~~

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

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

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

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

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

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

44 **(a) Must employ at least one person who is not an owner, member or limited partner of**
45 **the partnership or S corporation or who is not the sole proprietor;**

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

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

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

11 **(a) Employ in Oregon at least one person who is not an owner, member or limited part-**
12 **ner; and**

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

15 **(9) Unless the income distribution requirements of subsection (10) of this section are**
16 **met, a partnership or S corporation must, through the employment of persons who meet the**
17 **requirements of subsection (7)(a) to (c) of this section, obtain the following ratios of owners,**
18 **members or limited partners to employees:**

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

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

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

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

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

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

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

36 **(A) Employ in Oregon at least 10 persons who are not owners, members or limited part-**
37 **ners; and**

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

40 **(10) Unless the employee ratio requirements of subsection (9) of this section are met, if**
41 **the ordinary business income of the partnership or S corporation exceeds \$250,000, the dis-**
42 **tributions of income of a partnership or S corporation, as a percentage of ordinary business**
43 **income, may not exceed 25 percent. This percentage shall be computed based on the total**
44 **distributions and total ordinary business income for the current tax year, summed with up**
45 **to the two most recent tax years, or as many tax years for which the partnership or S cor-**

1 **poration has been operating, if fewer than two full years. An amount less than zero in any**
2 **year shall be treated as zero for that year.**

3 [(7)(a)] (11)(a) A nonresident may apply the reduced rates allowed under subsection (2)(b) of this
4 section only to income earned in Oregon.

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

9 **SECTION 2. The amendments to ORS 316.043 by section 1 of this 2021 Act apply to tax**
10 **years beginning on or after January 1, 2021.**

11 **SECTION 3. This 2021 Act takes effect on the 91st day after the date on which the 2021**
12 **regular session of the Eighty-first Legislative Assembly adjourns sine die.**

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