

Senate Bill 139

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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 **as introduced**.

Reduces amount of income eligible for elective reduced personal income tax rate allowed for certain pass-through income. Excludes income attributable to certain types of trade or business from eligibility for reduced rate.

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)(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 that is attributable to:**

20 (i) **A specified service trade or business, as defined in section 199A(d)(2) of the Internal**
21 **Revenue Code; or**

22 (ii) **The trade or business of performing services as an employee, for the purposes of**
23 **section 199A(d)(2) of the Internal Revenue Code.**

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

28 (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.

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

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

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

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

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

(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.

(7)(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.