

## SENATE AMENDMENTS TO SENATE BILL 139

By COMMITTEE ON FINANCE AND REVENUE

June 15

1 On page 1 of the printed bill, delete lines 5 through 28 and delete page 2 and insert:  
2 “**SECTION 1.** ORS 316.043 is amended to read:  
3 “316.043. (1) As used in this section:  
4 “(a) ‘Material participation’ has the meaning given that term in section 469 of the Internal Re-  
5 venue Code.  
6 “(b) ‘Nonpassive income’ means income other than income from passive activity as determined  
7 under section 469 of the Internal Revenue Code. ‘Nonpassive income’ does not include wages, in-  
8 terest, dividends or capital gains.  
9 “(c) ‘Nonpassive loss’ means loss other than loss from passive activity as determined under  
10 section 469 of the Internal Revenue Code.  
11 “(d) ‘Qualifying income’ means a taxpayer’s net income that meets the conditions of [*subsection*  
12 *(6)*] **subsections (6) to (10)** of this section, as reported on the taxpayer’s return, and that is com-  
13 puted by taking the sum of the taxpayer’s:  
14 “(A) Nonpassive income after reduction for nonpassive losses; and  
15 “(B) Business income or loss as a sole proprietor.  
16 “(2) If a taxpayer that meets the conditions of [*subsection (6)*] **subsections (6) to (10)** of this  
17 section has nonpassive income attributable to any partnership or S corporation after reduction for  
18 nonpassive losses or does business as a sole proprietorship, that portion of the taxpayer’s income  
19 that is qualifying income shall be taxed at:  
20 “(a) The rate applicable under ORS 316.037; or  
21 “(b) At the election of the taxpayer, a rate of:  
22 “(A) Seven percent of the first [*\$250,000*] **\$500,000** of taxable income, or fraction thereof;  
23 “[*(B) Seven and two-tenths percent of taxable income exceeding \$250,000 but not exceeding*  
24 *\$500,000;*]  
25 “[*(C)*] **(B)** [*Seven and six-tenths*] **Seven and one-half** percent of taxable income exceeding  
26 \$500,000 but not exceeding \$1 million;  
27 “[*(D)*] **(C)** Eight percent of taxable income exceeding \$1 million but not exceeding \$2.5 million;  
28 “[*(E)*] **(D)** Nine percent of taxable income exceeding \$2.5 million but not exceeding \$5 million;  
29 and  
30 “[*(F)*] **(E)** Nine and nine-tenths percent of taxable income exceeding \$5 million.  
31 “(3) The reduced rates allowed under subsection (2)(b) of this section may be adjusted as pro-  
32 vided in ORS 316.044.  
33 “(4) A taxpayer shall use the subtractions, deductions or additions otherwise allowed under this  
34 chapter in the calculation of income that is taxed at the rates otherwise applicable under ORS  
35 316.037. The only addition or subtraction allowed in the calculation of qualifying income for which

1 the taxpayer uses the reduced rates allowed under subsection (2)(b) of this section shall be any de-  
2preciation adjustment directly related to the partnership, S corporation or sole proprietorship.

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

10 “[*(6) The rates listed in subsection (2)(b) of this section apply to income attributable to a partner-*  
11 *ship, S corporation or sole proprietorship only if:*]

12 “[*(a) The taxpayer materially participates in the trade or business;*]

13 “[*(b) The partnership, S corporation or sole proprietorship employs at least one person who is not*  
14 *an owner, member or limited partner of the partnership or S corporation or who is not the sole pro-*  
15 *prietor; and]*

16 “[*(c) At least 1,200 aggregate hours of work in Oregon are performed, by the close of the tax year*  
17 *for which the reduced rate is allowed, by employees who meet the requirements of paragraph (b) of this*  
18 *subsection and who are employed by the partnership, S corporation or sole proprietorship. In deter-*  
19 *mining whether this requirement is met, only hours worked in a week in which a worker works at least*  
20 *30 hours may be considered.]*

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

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

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

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

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

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

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

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

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

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

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

1       “(9) Unless the income distribution requirements of subsection (10) of this section are  
2 met, a partnership or S corporation must, through the employment of persons who meet the  
3 requirements of subsection (7)(a) to (c) of this section, obtain the following ratios of owners,  
4 members or limited partners to employees:

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

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

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

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

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

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

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

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

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

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

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

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

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

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