

SB 139-10
(LC 2340)
6/4/21 (CMT/ps)

Requested by SENATE COMMITTEE ON FINANCE AND REVENUE

**PROPOSED AMENDMENTS TO
SENATE BILL 139**

1 On page 1 of the printed bill, line 2, after “316.043” insert “and 316.502”.

2 Delete lines 5 through 28 and delete page 2 and insert:

3 **“SECTION 1.** ORS 316.043 is amended to read:

4 “316.043. (1) As used in this section:

5 “(a) ‘Material participation’ has the meaning given that term in section
6 469 of the Internal Revenue Code.

7 “(b) ‘Nonpassive income’ means income other than income from passive
8 activity as determined under section 469 of the Internal Revenue Code.
9 ‘Nonpassive income’ does not include wages, interest, dividends or capital
10 gains.

11 “(c) ‘Nonpassive loss’ means loss other than loss from passive activity as
12 determined under section 469 of the Internal Revenue Code.

13 “(d) ‘Qualifying income’ means a taxpayer’s net income that meets the
14 conditions of [*subsection (6)*] **subsections (6) to (8)** of this section, as re-
15 ported on the taxpayer’s return, and that is computed by taking the sum of
16 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**
20 **(6) to (8)** of this section has nonpassive income attributable to any partner-
21 ship or S corporation after reduction for nonpassive losses or does business

1 as a sole proprietorship, that portion of the taxpayer's income that is quali-
2 fying income shall be taxed at:

3 “(a) The rate applicable under ORS 316.037; or

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

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

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

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

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

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

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

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

19 “(4) A taxpayer shall use the subtractions, deductions or additions other-
20 wise allowed under this chapter in the calculation of income that is taxed
21 at the rates otherwise applicable under ORS 316.037. The only addition or
22 subtraction allowed in the calculation of qualifying income for which the
23 taxpayer uses the reduced rates allowed under subsection (2)(b) of this sec-
24 tion shall be any depreciation adjustment directly related to the partnership,
25 S corporation or sole proprietorship.

26 “(5) The election under subsection (2)(b) of this section shall be irrev-
27 ocable and shall be made on the taxpayer's original return. If the taxpayer
28 uses the reduced rates allowed under subsection (2)(b) of this section, the
29 calculation of income shall be substantiated on a form prescribed by the
30 Department of Revenue and filed with the taxpayer's tax return for the tax

1 year or at such other time and manner as the department may prescribe by
2 rule. A taxpayer who uses the reduced rates available under subsection (2)(b)
3 of this section may not join in the filing of a composite return under ORS
4 314.778.

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

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

8 “[*(b) The partnership, S corporation or sole proprietorship employs at least*
9 *one person who is not an owner, member or limited partner of the partnership*
10 *or S corporation or who is not the sole proprietor; and]*

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

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

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

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

24 “**(c) For a partnership or S corporation, the trade or business**
25 **complies with the employee ratio requirements of subsection (7) of this**
26 **section or with the income distribution requirements of subsection (8)**
27 **of this section.**

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

30 “**(a) Must employ at least one person who is not an owner, member**

1 or limited partner of the partnership or S corporation or who is not
2 the sole proprietor;

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

8 “(c) May rely only on hours worked in a week in which a worker
9 works at least 30 hours, in determining whether the requirement in
10 paragraph (b) of this subsection is met; and

11 “(d) Unless the income distribution requirements of subsection (8)
12 of this section are met, must employ persons who meet the require-
13 ments of paragraphs (a) to (c) of this subsection, in the following ra-
14 tios of Oregon resident owners, members or limited partners compared
15 to employees working in Oregon:

16 “(A) If the ordinary business income of a partnership or S corpo-
17 ration does not exceed \$500,000, for every Oregon resident owner,
18 member or limited partner, the partnership or S corporation must
19 employ in Oregon at least one person who is not an owner, member
20 or limited partner.

21 “(B) If the ordinary business income of a partnership or S corpo-
22 ration exceeds \$500,000, but does not exceed \$1 million, for every
23 Oregon resident owner, member or limited partner, the partnership
24 or S corporation must employ in Oregon at least two persons who are
25 not owners, members or limited partners.

26 “(C) If the ordinary business income of a partnership or S corpo-
27 ration exceeds \$1 million, but does not exceed \$2.5 million, for every
28 Oregon resident owner, member or limited partner, the partnership
29 or S corporation must employ in Oregon at least four persons who are
30 not owners, members or limited partners.

1 **“(D) If the ordinary business income of a partnership or S corpo-**
2 **ration exceeds \$2.5 million, but does not exceed \$5 million, for every**
3 **Oregon resident owner, member or limited partner, the partnership**
4 **or S corporation must employ in Oregon at least 10 persons who are**
5 **not owners, members or limited partners.**

6 **“(8) Unless the employee ratio requirements of subsection (7)(d) of**
7 **this section are met, the distributions of income of a partnership or**
8 **S corporation, as a percentage of ordinary business income, may not**
9 **exceed 25 percent. This percentage shall be computed based on the**
10 **total distributions and total ordinary business income for the current**
11 **tax year, summed with up to the two most recent tax years, or as**
12 **many tax years for which the partnership or S corporation has been**
13 **operating, if fewer than two full years. An amount less than zero in**
14 **any year shall be treated as zero for that year.**

15 **“[(7)(a)] (9)(a) A nonresident may apply the reduced rates allowed under**
16 **subsection (2)(b) of this section only to income earned in Oregon.**

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

22 **“SECTION 2. The amendments to ORS 316.043 by section 1 of this**
23 **2021 Act apply to tax years beginning on or after January 1, 2021.**

24 **“SECTION 3. Sections 4 to 8 of this 2021 Act are added to and made**
25 **a part of ORS chapter 314.**

26 **“SECTION 4. As used in sections 4 to 8 of this 2021 Act:**

27 **“(1) ‘Distributive proceeds’ means the net income, dividends, roy-**
28 **alties, interest, rents, guaranteed payments and gains of a pass-**
29 **through entity, derived from or connected with sources within this**
30 **state.**

1 “(2) ‘Member’ means a shareholder of an S corporation, a partner
2 in a general, limited or limited liability partnership or a member of a
3 limited liability company.

4 “(3) ‘Partnership’ means a syndicate, group, pool, joint venture or
5 other unincorporated organization, through or by means of which any
6 business, financial operation or venture is carried on in this state.

7 “(4) ‘Pass-through entity’ means a partnership, an S corporation
8 or a limited liability company.

9 “(5) ‘Share of distributive proceeds’ means the portion of distribu-
10 tive proceeds attributable to a member of a pass-through entity in a
11 tax year.

12 “SECTION 5. (1) A pass-through entity may elect to be liable for
13 and pay a pass-through business alternative income tax if the pass-
14 through entity has at least one member who is liable under ORS
15 chapter 316 for personal income tax on that member’s share of dis-
16 tributive proceeds of the pass-through entity.

17 “(2) The election to pay the pass-through business alternative in-
18 come tax is available if consent is made by each member of the elect-
19 ing pass-through entity who is a member at the time the election is
20 filed or by any officer, manager or member of the electing pass-
21 through entity who is authorized, under law or the entity’s organiza-
22 tional documents, to make the election and who represents to having
23 such authorization under penalties of perjury. The election shall be
24 made annually on or before the due date of the pass-through entity’s
25 return, in the form and manner prescribed by the Department of
26 Revenue. The election may not be made retroactively. The members
27 of a pass-through entity may revoke an election under this section for
28 a tax year only on or before the due date of the pass-through entity’s
29 return for that tax year.

30 “(3) Each pass-through entity that makes an election for a tax year

1 of distributive proceeds

2 over \$5,000,000

3 “

4 **“(5) The amount of pass-through business alternative income tax**
5 **due from a pass-through entity in a tax year shall be exclusive of any**
6 **amount of tax due and paid by the pass-through entity under ORS**
7 **chapter 317 or 318, except as otherwise provided in sections 4 to 8 of**
8 **this 2021 Act.**

9 **“(6) Pass-through entities that have made an election under this**
10 **section shall file an entity tax return. The return shall be accompanied**
11 **by payment and shall be due on the date applicable to returns due**
12 **under ORS chapter 316, as provided in ORS 314.385.**

13 **“SECTION 6. Except as otherwise provided in sections 4 to 8 of this**
14 **2021 Act or where the context requires otherwise, the provisions of**
15 **ORS chapters 305 and 314 as to the audit and examination of returns,**
16 **periods of limitation, determinations of and notices of deficiencies,**
17 **assessments, collections, liens, delinquencies, claims for refund and**
18 **refunds, conferences, appeals to the Oregon Tax Court, stays of col-**
19 **lection pending appeal, confidentiality of returns and the related pen-**
20 **alties, and the related procedures, apply to the determinations of**
21 **taxes, penalties and interest under sections 4 to 8 of this 2021 Act.**

22 **“SECTION 7. (1) The Department of Revenue shall administer and**
23 **enforce sections 4 to 8 of this 2021 Act.**

24 **“(2) The department may adopt or establish rules and procedures**
25 **that the department considers necessary or appropriate for the imple-**
26 **mentation, administration and enforcement of sections 4 to 8 of this**
27 **2021 Act and that are consistent with sections 4 to 8 of this 2021 Act.**

28 **“SECTION 8. The net revenue from the tax imposed by sections 4**
29 **to 8 of this 2021 Act, after deducting refunds, shall be paid over to the**
30 **State Treasurer and held in the General Fund as miscellaneous re-**

1 ceipts available generally to meet any expense or obligation of the
2 State of Oregon lawfully incurred.

3 **“SECTION 9.** Section 10 of this 2021 Act is added to and made a part
4 of ORS chapter 315.

5 **“SECTION 10.** (1) If a pass-through entity, as defined in section 4
6 of this 2021 Act, elects to owe and pay the pass-through business al-
7 ternative income tax determined under section 5 of this 2021 Act, a
8 taxpayer that is a member of the pass-through entity shall be allowed
9 a credit against the taxes that are otherwise due under ORS chapter
10 316. For each pass-through entity of which the taxpayer is a member,
11 the credit allowed under this section shall equal the member’s pro rata
12 share of the tax paid for the tax year under section 5 of this 2021 Act.

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

21 **“(3)** In the case of a credit allowed under this section:

22 **“(a)** A nonresident shall be allowed the credit in the proportion
23 provided in ORS 316.117.

24 **“(b)** If a change in the status of a taxpayer from resident to non-
25 resident or from nonresident to resident occurs, the credit shall be
26 determined in a manner consistent with ORS 316.117.

27 **“(c)** If a change in the tax year of a taxpayer occurs as described
28 in ORS 314.085, or if the Department of Revenue terminates the
29 taxpayer’s tax year under ORS 314.440, the credit shall be prorated or
30 computed in a manner consistent with ORS 314.085.

1 **SECTION 11.** ORS 316.502 is amended to read:

2 “316.502. (1) The net revenue from the tax imposed by this chapter, after
3 deducting refunds and amounts described in ORS 285B.630 and 285C.635, shall
4 be paid over to the State Treasurer and held in the General Fund as mis-
5 cellaneous receipts available generally to meet any expense or obligation of
6 the State of Oregon lawfully incurred.

7 “(2) A working balance of unreceipted revenue from the tax imposed by
8 this chapter may be retained for the payment of refunds, but such working
9 balance shall not at the close of any fiscal year exceed the sum of \$1 million.

10 “(3) Moneys are continuously appropriated to the Department of Revenue
11 to make:

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

13 “(b) The refund payments in excess of tax liability authorized under ORS
14 315.174, 315.262, 315.264 and 315.266 and section 17, chapter 906, Oregon Laws
15 2007, **and section 10 of this 2021 Act.**

16 **SECTION 12. Sections 5 and 10 of this 2021 Act apply to tax years
17 beginning on or after January 1, 2022, and before January 1, 2024.**

18 **SECTION 13. This 2021 Act takes effect on the 91st day after the
19 date on which the 2021 regular session of the Eighty-first Legislative
20 Assembly adjourns sine die.”.**

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