

SB 727-4  
(LC 3269)  
6/11/21 (CMT/ps)

Requested by SENATE COMMITTEE ON FINANCE AND REVENUE

**PROPOSED AMENDMENTS TO  
SENATE BILL 727**

1 In line 2 of the printed bill, after “taxation;” insert “creating new pro-  
2 visions; amending ORS 316.502;”.

3 Delete lines 4 through 18 and insert:

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

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

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

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

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

17 **“(4) ‘Pass-through entity’ means a partnership or S corporation or  
18 a limited liability company electing to be treated as a partnership or  
19 S corporation.**

20 **“(5) ‘Share of distributive proceeds’ means the portion of distribu-  
21 tive proceeds attributable to a member of a pass-through entity in a**

1 tax year.

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

5 **“(a) Individuals subject to the personal income tax imposed under**  
6 **ORS chapter 316; or**

7 **“(b) Entities that are pass-through entities owned entirely by indi-**  
8 **viduals subject to the personal income tax imposed under ORS chapter**  
9 **316.**

10 **“(2) The election to pay the pass-through business alternative in-**  
11 **come tax is available if consent is given by all members of the electing**  
12 **pass-through entity who are members at the time the election is filed**  
13 **or is made by any officer, manager or member of the electing pass-**  
14 **through entity who is authorized, under law or the entity’s organiza-**  
15 **tional documents, to make the election and who represents to having**  
16 **such authorization under penalties of perjury. The election shall be**  
17 **made annually on or before the due date, including extensions, of the**  
18 **pass-through entity’s return, in the form and manner prescribed by**  
19 **the Department of Revenue. The election may not be made**  
20 **retroactively. The members of a pass-through entity may revoke an**  
21 **election under this section for a tax year only on or before the due**  
22 **date of the pass-through entity’s return for that tax year, and only if**  
23 **the revocation is agreed to by all members who are members at the**  
24 **time of the revocation.**

25 **“(3) In determining the sum of distributive proceeds and computing**  
26 **the tax under this section, a pass-through entity shall add back any**  
27 **amount of Oregon tax imposed under ORS chapter 317 or 318 and de-**  
28 **ducted by the pass-through entity at the entity level for federal income**  
29 **tax purposes under section 164 of the Internal Revenue Code.**

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

1 pursuant to this section shall annually report to each of its members,  
2 for the tax year, the member's share of distributive proceeds and share  
3 of tax paid under this section and eligible for the credit allowed under  
4 section 8 of this 2021 Act.

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

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

11 “(a) Nine percent of the first \$250,000, or fraction thereof, of the  
12 sum of distributive proceeds; and

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

15 “(7) The amount of pass-through business alternative income tax  
16 due from a pass-through entity in a tax year shall be exclusive of any  
17 amount of tax due and paid by the pass-through entity under ORS  
18 chapter 317 or 318, except as otherwise provided in sections 2 to 6 of  
19 this 2021 Act.

20 “(8) Pass-through entities that have made an election under this  
21 section shall file an entity tax return. The return shall be accompanied  
22 by payment and shall be due on the date applicable to returns due  
23 under ORS chapter 316, as provided in ORS 314.385.

24 “SECTION 3a. The Department of Revenue may develop and im-  
25 plement a system providing for the filing by electronic means of re-  
26 turns required under section 3 of this 2021 Act.

27 “SECTION 4. Except as otherwise provided in sections 2 to 6 of this  
28 2021 Act or where the context requires otherwise, the provisions of  
29 ORS chapters 305 and 314 as to the audit and examination of returns,  
30 periods of limitation, determinations of and notices of deficiencies,

1 assessments, collections, liens, delinquencies, claims for refund and  
2 refunds, conferences, appeals to the Oregon Tax Court, stays of col-  
3 lection pending appeal, confidentiality of returns and the related pen-  
4 alties, and the related procedures, apply to the determinations of  
5 taxes, penalties and interest under sections 2 to 6 of this 2021 Act.

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

8 **“(2)** The department may adopt or establish rules and procedures  
9 that the department considers necessary or appropriate for the imple-  
10 mentation, administration and enforcement of sections 2 to 6 of this  
11 2021 Act and that are consistent with sections 2 to 6 of this 2021 Act.

12 **“SECTION 6.** The net revenue from the tax imposed by sections 2  
13 to 6 of this 2021 Act, after deducting refunds, shall be paid over to the  
14 State Treasurer and held in the General Fund as miscellaneous re-  
15 cepts available generally to meet any expense or obligation of the  
16 State of Oregon lawfully incurred.

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

19 **“SECTION 8.** (1) If a pass-through entity, as defined in section 2 of  
20 this 2021 Act, elects to owe and pay the pass-through business alter-  
21 native income tax determined under section 3 of this 2021 Act, a tax-  
22 payer that is a member of the pass-through entity shall be allowed a  
23 credit against the taxes that are otherwise due under ORS chapter 316.  
24 For each pass-through entity of which the taxpayer is a member, the  
25 credit allowed under this section shall equal the member’s pro rata  
26 share of the tax paid for the tax year under section 3 of this 2021 Act.

27 **“(2)** If the amount allowable as a credit under this section, when  
28 added to the sum of the amounts allowable as payment of tax under  
29 ORS 316.187 or 316.583, other tax prepayment amounts and other  
30 refundable credit amounts, exceeds the taxes imposed by ORS chapters

1 **314 and 316 for the tax year after application of any nonrefundable**  
2 **credits allowable for purposes of ORS chapter 316 for the tax year, the**  
3 **amount of the excess shall be refunded to the taxpayer as provided in**  
4 **ORS 316.502.**

5 **“SECTION 9.** ORS 316.502 is amended to read:

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

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

14 “(3) Moneys are continuously appropriated to the Department of Revenue  
15 to make:

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

17 “(b) The refund payments in excess of tax liability authorized under ORS  
18 315.174, 315.262, 315.264 and 315.266 and section 17, chapter 906, Oregon Laws  
19 2007, **and section 3 of this 2021 Act.**

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

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

25