

A-Engrossed
Senate Bill 158

Ordered by the Senate April 10
Including Senate Amendments dated April 10

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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.

Extends sunsets for pass-through business alternative income tax and related personal income tax credit. **Includes trusts among types of members that cause pass-through entity to be eligible to elect to pay tax. Requires member of pass-through entity to add back amount of Oregon tax deducted for federal income tax purposes. Allows pass-through entity to credit overpayment of tax against estimated tax installment for subsequent tax year.**

Applies to tax years beginning on or after January 1, 2023, and before January 1, 2026.
Takes effect on 91st day following adjournment sine die.

A BILL FOR AN ACT

1
2 Relating to the pass-through business alternative income tax; amending sections 3, 10 and 12, chap-
3 ter 589, Oregon Laws 2021; and prescribing an effective date.

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

5 **SECTION 1.** Section 3, chapter 589, Oregon Laws 2021, as amended by section 3, chapter 82,
6 Oregon Laws 2022, is amended to read:

7 **Sec. 3.** (1) A pass-through entity may elect to be liable for and pay a pass-through business al-
8 ternative income tax if all members of the pass-through entity are:

9 (a) Individuals subject to the personal income tax imposed under ORS chapter 316; [*or*]

10 (b) Entities that are pass-through entities owned entirely by individuals subject to the personal
11 income tax imposed under ORS chapter 316[.]; **or**

12 **(c) Trusts.**

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

23 (3)(a) In determining the sum of distributive proceeds and computing the tax under this
24 section[, *a member of*]:

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 (A) A pass-through entity shall add back any amount of Oregon tax [*imposed under this chapter*
2 *and*] deducted by the pass-through entity at the entity level for federal income tax purposes under
3 section 164 of the Internal Revenue Code.

4 (B) **A member of a pass-through entity shall add back any amount of Oregon tax imposed**
5 **on the member in relation to membership in the pass-through entity and deducted by the**
6 **member of the pass-through entity for federal income tax purposes under section 164 of the**
7 **Internal Revenue Code.**

8 (b) Any amount that is added back under this subsection and that meets the conditions for the
9 use of elective rates under ORS 316.043 may be treated as qualifying income under ORS 316.043, in
10 a proportion determined by the department by rule.

11 (4) Each pass-through entity that makes an election for a tax year pursuant to this section shall
12 annually report to each of its members, for the tax year, the member's share of distributive proceeds
13 and share of tax paid under this section and eligible for the credit allowed under section 8, chapter
14 589, Oregon Laws 2021.

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

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

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

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

22 (7) The amount of pass-through business alternative income tax due from a pass-through entity
23 in a tax year shall be exclusive of any amount of tax due and paid by the pass-through entity under
24 this chapter, except as otherwise provided in sections 2 to 6, chapter 589, Oregon Laws 2021.

25 (8) Pass-through entities that have made an election under this section shall file an entity tax
26 return. The return shall be accompanied by payment and shall be due on the date applicable to re-
27 turns due under ORS chapter 316, as provided in ORS 314.385.

28 (9) **If a pass-through entity has made an overpayment of tax under this section, the**
29 **pass-through entity may elect to have that overpayment credited against an installment of**
30 **estimated tax for the subsequent tax year. The department shall administer this subsection**
31 **in a manner consistent with the treatment of overpayment of income tax under ORS 316.583.**

32 **SECTION 2.** Section 10, chapter 589, Oregon Laws 2021, is amended to read:

33 **Sec. 10.** (1) Sections 3 and 8, **chapter 589, Oregon Laws 2021**, [*of this 2021 Act*] apply to tax
34 years beginning on or after January 1, 2022, and before January 1, [2024] **2026**.

35 (2) **The amendments to section 3, chapter 589, Oregon Laws 2021, by section 1 of this 2023**
36 **Act apply to tax years beginning on or after January 1, 2023, and before January 1, 2026.**

37 **SECTION 3.** Section 12, chapter 589, Oregon Laws 2021, is amended to read:

38 **Sec. 12.** The repeal of sections 3 and 8, **chapter 589, Oregon Laws 2021**, [*of this 2021 Act*] by
39 section 11, **chapter 589, Oregon Laws 2021**, [*of this 2021 Act*] applies to any tax year that begins
40 on or after January 1, 2022, and before January 1, [2024] **2026**, and to which section 164(b)(6) of the
41 Internal Revenue Code is not applicable.

42 **SECTION 4.** **This 2023 Act takes effect on the 91st day after the date on which the 2023**
43 **regular session of the Eighty-second Legislative Assembly adjourns sine die.**