

# D R A F T

## SUMMARY

Expands availability of elective reduced personal income tax rate for certain pass-through income to taxpayers doing business as sole proprietors.  
Applies to tax years beginning on or after January 1, 2018.  
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  
3 prescribing an effective 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  
8 469 of the Internal Revenue Code.

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

13 (c) "Nonpassive loss" means loss other than loss from passive activity as  
14 determined under section 469 of the Internal Revenue Code.

15 (2) If a taxpayer that meets the conditions of subsection (6) of this section  
16 has nonpassive income attributable to any partnership or S corporation after  
17 reduction for nonpassive losses **or does business as a sole**  
18 **proprietorship**, that portion of the taxpayer's income that meets the condi-  
19 tions of subsection (6) of this section shall be taxed at:

20 (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.

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

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

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

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

8 (D) Eight percent of taxable income exceeding \$1 million but not exceed-  
9 ing \$2.5 million;

10 (E) Nine percent of taxable income exceeding \$2.5 million but not ex-  
11 ceeding \$5 million; and

12 (F) Nine and nine-tenths percent of taxable income exceeding \$5 million.

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

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

22 (5) The election under subsection (2)(b) of this section shall be irrevocable  
23 and shall be made on the taxpayer's original return. If the taxpayer uses the  
24 reduced rates allowed under subsection (2)(b) of this section, the calculation  
25 of income shall be substantiated on a form prescribed by the Department of  
26 Revenue and filed with the taxpayer's tax return for the tax year or at such  
27 other time and manner as the department may prescribe by rule. A taxpayer  
28 who uses the reduced rates available under subsection (2)(b) of this section  
29 may not join in the filing of a composite return under ORS 314.778.

30 (6) The rates listed in subsection (2)(b) of this section apply to nonpassive  
31 income attributable to a partnership, [or] S corporation **or sole**

1 **proprietorship** only if:

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

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

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

12 (7)(a) A nonresident may apply the reduced rates allowed under sub-  
13 section (2)(b) of this section only to income earned in Oregon.

14 (b) A part-year resident shall calculate the tax due using the reduced  
15 rates allowed under subsection (2)(b) of this section by first applying those  
16 rates to the taxpayer's nonpassive income that meets the requirements of  
17 subsection (6) of this section, and then multiplying that amount by the ratio  
18 of the taxpayer's nonpassive income in Oregon divided by nonpassive income  
19 from all sources.

20 **SECTION 2. The amendments to ORS 316.043 by section 1 of this**  
21 **2018 special session Act apply to tax years beginning on or after Jan-**  
22 **uary 1, 2018.**

23 **SECTION 3. This 2018 special session Act takes effect on the 91st**  
24 **day after the date on which the 2018 special session of the Seventy-**  
25 **ninth Legislative Assembly adjourns sine die.**

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