

# House Bill 2488

Introduced and printed pursuant to House Rule 12.00. Pre-session filed (at the request of Governor John A. Kitzhaber, M.D., for Department of Revenue)

## 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 **as introduced**.

Replaces penalty for taxpayer's substantial understatement of taxable income with penalty for substantial understatement of net tax. Provides for adjustment of net tax threshold amounts for inflation.

Applies to tax years beginning on or after January 1, 2015.

Takes effect on 91st day following adjournment sine die.

## A BILL FOR AN ACT

1  
2 Relating to penalty for substantial understatement by taxpayer; creating new provisions; amending  
3 ORS 314.402; and prescribing an effective date.

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

5 **SECTION 1.** ORS 314.402 is amended to read:

6 314.402. (1) If the Department of Revenue determines that there is a substantial understatement  
7 of [*taxable income*] **net tax** for any [*taxable*] **tax** year under any law imposing a tax on or measured  
8 by net income, there shall be added to the amount of tax required to be shown on the return a  
9 penalty equal to 20 percent of the amount of any underpayment of tax attributable to the under-  
10 statement [*of taxable income*].

11 (2) A substantial understatement of [*taxable income*] **net tax** exists for any [*taxable*] **tax** year if  
12 the amount of the understatement for the [*taxable*] **tax** year exceeds:

13 (a) Except as provided in paragraph (b) of this subsection, [*\$15,000*] \$\_\_\_\_\_.

14 (b) In the case of a corporation other than an S corporation, as defined in section 1361 of the  
15 Internal Revenue Code, or a personal holding company, as defined in section 542 of the Internal  
16 Revenue Code, [*\$25,000*] \$\_\_\_\_\_.

17 (c)(A) **For a calendar year beginning on or after January 1, 2017, the Department of Re-**  
18 **venue shall make a cost-of-living adjustment to the net tax threshold amounts described in**  
19 **paragraphs (a) and (b) of this subsection.**

20 (B) **The cost-of-living adjustment for a calendar year is the percentage by which the**  
21 **monthly averaged U.S. City Average Consumer Price Index for the 12 consecutive months**  
22 **ending August 31 of the prior calendar year exceeds the monthly averaged index for the pe-**  
23 **riod beginning September 1, 2015, and ending August 31, 2016.**

24 (C) **As used in this paragraph, "U.S. City Average Consumer Price Index" means the U.S.**  
25 **City Average Consumer Price Index for All Urban Consumers (All Items) as published by the**  
26 **Bureau of Labor Statistics of the United States Department of Labor.**

27 (D) **If any adjustment determined under subparagraph (B) of this paragraph is not a**  
28 **multiple of \$50, the adjustment shall be rounded to the next lower multiple of \$50.**

29 (E) **The adjustment shall apply to all tax years beginning in the calendar year for which**

**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 **the adjustment is made.**

2 (3) In the case of any item attributable to an abusive tax shelter:

3 (a) No reduction of the amount of the understatement shall be made with regard to that item  
4 regardless of the existence of substantial authority for the treatment of the item by the taxpayer.

5 (b) No reduction of the amount of the understatement shall be made with regard to that item  
6 regardless of the disclosure of the facts affecting the tax treatment of the item unless, in addition  
7 to the disclosure, the taxpayer reasonably believed that the tax treatment of the item was more  
8 likely than not the proper treatment.

9 (4) As used in this section:

10 (a) "Abusive tax shelter" means any partnership, corporation or other organization or entity,  
11 any investment plan or arrangement or any other plan or arrangement, which has as its principal  
12 purpose the evasion or improper avoidance of federal or state income tax. "Abusive tax shelter"  
13 includes any investment or activity in connection with which tax benefits derived by investors are  
14 not clearly intended under the tax laws or any investment or activity that involves little or no  
15 economic reality, making use of unrealistic allocations of income or expenses, inflated appraisals of  
16 asset values, losses substantially in excess of investment, mismatching of income and expenses, fi-  
17 nancing techniques that do not conform to standard commercial business practice or mischaracter-  
18 ization of the substance of the investment or activity.

19 (b) "Understatement" means the excess of the amount of the [*taxable income*] **net tax** required  
20 to be shown on the return for the [*taxable year*] **tax year** over the amount of the [*taxable income*  
21 *which is*] **net tax** shown on the return, reduced by any portion of the understatement that is at-  
22 tributable to:

23 (A) The tax treatment of any item by the taxpayer if there is or was substantial authority for  
24 such treatment; or

25 (B) Any item with respect to which:

26 (i) The relevant facts affecting the item's tax treatment are adequately disclosed in the return  
27 or in a statement attached to the return; and

28 (ii) There is a reasonable basis for the tax treatment of the item by the taxpayer.

29 (5) The penalty imposed under this section is in addition to any other penalty imposed by law.  
30 A penalty imposed under this section shall be treated for all purposes as an additional deficiency  
31 subject to the provisions of ORS 305.265, but shall not bear interest.

32 (6) The department may waive all or any part of the penalty imposed under this section on a  
33 showing by the taxpayer that there was reasonable cause for the understatement, or any portion  
34 thereof, and that the taxpayer acted in good faith.

35 **SECTION 2. The amendments to ORS 314.402 by section 1 of this 2015 Act apply to tax**  
36 **years beginning on or after January 1, 2015.**

37 **SECTION 3. This 2015 Act takes effect on the 91st day after the date on which the 2015**  
38 **regular session of the Seventy-eighth Legislative Assembly adjourns sine die.**