

D R A F T

SUMMARY

Reduces amount of income eligible for elective reduced personal income tax rate allowed for certain pass-through income. Requires that income must also be eligible for federal deduction available for pass-through income in order to use reduced rates.

Applies to tax years beginning on or after January 1, 2019.

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, as amended by section 1, chapter 1, Oregon
6 Laws 2018 (special session), is amended to read:

7 316.043. (1) As used in this section:

8 (a) “Material participation” has the meaning given that term in section
9 469 of the Internal Revenue Code.

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

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

16 (d)(A) “Qualifying income” means a taxpayer’s net income that meets the
17 conditions of subsection (6) of this section, as reported on the taxpayer’s
18 return, and that is computed by taking the sum of the taxpayer’s:

1 [(A)] (i) Nonpassive income after reduction for nonpassive losses; and

2 [(B)] (ii) Business income or loss as a sole proprietor.

3 **(B) “Qualifying income” does not include income in excess of:**

4 **(i) \$415,000 for joint return filers, a head of household or a surviving**
5 **spouse; or**

6 **(ii) \$207,500 for all other taxpayers.**

7 (2) If a taxpayer that meets the conditions of subsection (6) of this section
8 has nonpassive income attributable to any partnership or S corporation after
9 reduction for nonpassive losses or does business as a sole proprietorship, that
10 portion of the taxpayer’s income that is qualifying income shall be taxed at:

11 (a) The rate applicable under ORS 316.037; or

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

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

15 (B) Seven and two-tenths percent of taxable income exceeding \$250,000 but
16 not exceeding [~~\$500,000;~~] **\$415,000; and**

17 [~~(C) Seven and six-tenths percent of taxable income exceeding \$500,000 but~~
18 ~~not exceeding \$1 million;]~~

19 [~~(D) Eight percent of taxable income exceeding \$1 million but not exceeding~~
20 ~~\$2.5 million;]~~

21 [~~(E) Nine percent of taxable income exceeding \$2.5 million but not exceeding~~
22 ~~\$5 million; and]~~

23 [(F)] **(C) Nine and nine-tenths percent of taxable income exceeding [~~\$5~~**
24 **million] **\$415,000.****

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

27 (4) A taxpayer shall use the subtractions, deductions or additions other-
28 wise allowed under this chapter in the calculation of income that is taxed
29 at the rates otherwise applicable under ORS 316.037. The only addition or
30 subtraction allowed in the calculation of qualifying income for which the
31 taxpayer uses the reduced rates allowed under subsection (2)(b) of this sec-

1 tion shall be any depreciation adjustment directly related to the partnership,
2 S corporation or sole proprietorship.

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

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

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

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

17 **(c) The taxpayer is eligible to claim a deduction on the taxpayer's**
18 **federal income tax return under section 199A(a) of the Internal Reve-**
19 **nue Code for the qualifying income; and**

20 *[(c)]* **(d)** At least 1,200 aggregate hours of work in Oregon are performed,
21 by the close of the tax year for which the reduced rate is allowed, by em-
22 ployees who meet the requirements of paragraph (b) of this subsection and
23 who are employed by the partnership, S corporation or sole proprietorship.
24 In determining whether this requirement is met, only hours worked in a
25 week in which a worker works at least 30 hours may be considered.

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

28 (b) A part-year resident shall calculate the tax due using the reduced
29 rates allowed under subsection (2)(b) of this section by first applying those
30 rates to the taxpayer's qualifying income, and then multiplying that amount
31 by the ratio of the taxpayer's income in Oregon divided by income from all

1 sources.

2 **SECTION 2. The amendments to ORS 316.043 by section 1 of this**
3 **2019 Act apply to tax years beginning on or after January 1, 2019.**

4 **SECTION 3. This 2019 Act takes effect on the 91st day after the date**
5 **on which the 2019 regular session of the Eightieth Legislative Assem-**
6 **bly adjourns sine die.**

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