

**A-Engrossed**  
**House Bill 2060**

Ordered by the House June 21  
Including House Amendments dated June 21

Introduced and printed pursuant to House Rule 12.00. Pre-session filed (at the request of House Interim Committee on 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.

For purposes of taxpayer election of reduced tax rate for certain pass-through nonpassive income, requires net increase in number of employees. **Provides that employees must perform required hours of employment in certain industry sectors.**

Applies to tax years beginning on or after January 1, [2018] 2017.

Takes effect on 91st day following adjournment sine die.

**A BILL FOR AN ACT**

1  
2 Relating to employment requirements for elective reduced rate of taxation on pass-through income;  
3 creating new provisions; amending ORS 316.043; repealing ORS 316.044; and prescribing an ef-  
4 fective date.

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

6 **SECTION 1.** ORS 316.043 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 469 of the Internal Re-  
9 venue Code.

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

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

15 (2) If a taxpayer that meets the conditions of subsection [(6)] (5) of this section has nonpassive  
16 income attributable to any partnership or S corporation after reduction for nonpassive losses, that  
17 portion of the taxpayer's income that meets the conditions of subsection [(6)] (5) of this section shall  
18 be taxed at:

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

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

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

22 (B) Seven and two-tenths percent of taxable income exceeding \$250,000 but not exceeding  
23 \$500,000;

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

26 (D) Eight percent of taxable income exceeding \$1 million but not exceeding \$2.5 million;

**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 (E) Nine percent of taxable income exceeding \$2.5 million but not exceeding \$5 million; and

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

3 [(3) *The reduced rates allowed under subsection (2)(b) of this section may be adjusted as provided*  
4 *in ORS 316.044.*]

5 [(4) (3) A taxpayer shall use the subtractions, deductions or additions otherwise allowed under  
6 this chapter in the calculation of income that is taxed at the rates otherwise applicable under ORS  
7 316.037. The only addition or subtraction allowed in the calculation of nonpassive income for which  
8 the taxpayer uses the reduced rates allowed under subsection (2)(b) of this section shall be any de-  
9preciation adjustment directly related to the partnership or S corporation.

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

17 [(6) (5) The rates listed in subsection (2)(b) of this section apply to nonpassive income attrib-  
18 utable to a partnership or S corporation only if **all of the following conditions are met:**

19 (a) The taxpayer materially participates in the trade or business[;].

20 (b) The partnership or S corporation employs at least [*one person who is not an owner, member*  
21 *or limited partner*] **10 persons during each pay period who are not owners, members or limited**  
22 **partners** of the partnership or S corporation[; *and*].

23 (c) [*At least 1,200 aggregate hours of work in Oregon are performed, by the close of the tax year*  
24 *for which the reduced rate is allowed, by employees who meet the requirements of paragraph (b) of this*  
25 *subsection and who are employed by the partnership or S corporation.*] **Each of the employees who**  
26 **are employed by the partnership or S corporation and who are described in paragraph (b) of**  
27 **this subsection performs at least 1,200 aggregate hours of work in Oregon by the close of the**  
28 **tax year for which the reduced rate is allowed.** In determining whether this requirement is met,  
29 only hours worked in a week in which a worker works at least 30 hours may be considered.

30 (d) **The employees perform the required hours of employment in an industry in any of**  
31 **the following sectors, as denoted by the corresponding North American Industry Classifica-**  
32 **tion System code:**

33 (A) **Agriculture, Forestry, Fishing and Hunting, (11).**

34 (B) **Mining, Quarrying and Oil and Gas Extraction, (21).**

35 (C) **Manufacturing, (31-33).**

36 (D) **Wholesale Trade, (42).**

37 (E) **Transportation and Warehousing, (48-49).**

38 (F) **Information, (51).**

39 (G) **Accommodation and Food Services, (72).**

40 [(7)(a) (6)(a) A nonresident may apply the reduced rates allowed under subsection (2)(b) of this  
41 section only to income earned in Oregon.

42 (b) A part-year resident shall calculate the tax due using the reduced rates allowed under sub-  
43 section (2)(b) of this section by first applying those rates to the taxpayer's nonpassive income that  
44 meets the requirements of subsection [(6) (5) of this section, and then multiplying that amount by  
45 the ratio of the taxpayer's nonpassive income in Oregon divided by nonpassive income from all

1 sources.

2 **SECTION 2.** The amendments to ORS 316.043 by section 1 of this 2017 Act apply to tax  
3 years beginning on or after January 1, 2017.

4 **SECTION 3.** The Department of Revenue shall waive any interest that would otherwise  
5 apply to taxes due if the interest is based on underpayment or underreporting that results  
6 solely from the amendments to ORS 316.043 by section 1 of this 2017 Act.

7 **SECTION 4.** Section 3 of this 2017 Act applies to tax years beginning on or after January  
8 1, 2017, and before January 1, 2018.

9 **SECTION 5.** ORS 316.044 is repealed.

10 **SECTION 6.** This 2017 Act takes effect on the 91st day after the date on which the 2017  
11 regular session of the Seventy-ninth Legislative Assembly adjourns sine die.

12