

A-Engrossed
Senate Bill 1528

Ordered by the Senate February 9
Including Senate Amendments dated February 9

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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.

[Limits expenses for which dependent care income tax credit may be claimed to lesser of each spouse's income on joint return and to earned income taxable by Oregon.]

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

[Allows, in years in which tax credits have been certified for contributions to Oregon Production Investment Fund, Legislative Assembly to appropriate to fund balance of amount allowed for certification but not certified.]

[Applies to fiscal years beginning on or after January 1, 2019.]

[Adjusts sunset date for property tax exemption for low income rental housing.]

Creates tax credit for contributions to Opportunity Grant Fund. Directs Department of Revenue, in cooperation with Higher Education Coordinating Commission, to conduct auction of tax credits. Establishes Opportunity Grant Fund. Directs commission to use moneys in fund for Oregon Opportunity Grant program. Limits amount of credits per fiscal year. Applies to tax years beginning on or after January 1, 2018, and before January 1, 2024.

Requires, for Oregon income tax purposes, addition to federal taxable income of amount of federal deduction for qualified business income from pass-through entity. Applies to tax years beginning on or after January 1, 2018.

Expands availability of elective reduced tax rate for certain pass-through income to taxpayer doing business as sole proprietor. Disallows qualification for elective reduced rate using hours performed by employees performing in certain industry sectors. Limits amount of income for which reduced rate may be elected. Applies to tax years beginning on or after January 1, 2018.

Increases amount of personal exemption tax credit. Applies to tax years beginning on or after January 1, 2018, and before January 1, 2026.

Takes effect on 91st day following adjournment sine die.

A BILL FOR AN ACT

1
2 Relating to taxation; creating new provisions; amending ORS 314.752, 316.043, 316.085 and 318.031;
3 repealing ORS 316.044; and prescribing an effective date.

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

5 **SECTION 1. Sections 2 and 3 of this 2018 Act are added to and made a part of ORS**
6 **chapter 315.**

7 **SECTION 2. (1) A credit against the taxes that are otherwise due under ORS chapter 316**
8 **or, if the taxpayer is a corporation, under ORS chapter 317 or 318, is allowed to a taxpayer**
9 **for certified Opportunity Grant contributions made by the taxpayer during the tax year to**
10 **the Opportunity Grant Fund established under section 4 of this 2018 Act.**

11 **(2)(a) The Department of Revenue shall, in cooperation with the Higher Education Coor-**
12 **minating Commission, conduct an auction of tax credits under this section. The department**
13 **may conduct the auction in the manner that it determines is best suited to maximize the**
14 **return to the state on the sale of tax credit certifications and shall announce a reserve bid**

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 prior to conducting the auction. The reserve amount shall be at least 95 percent of the total
2 amount of the tax credit. Moneys necessary to reimburse the department for the actual
3 costs incurred by the department in administering an auction, not to exceed 0.25 percent of
4 auction proceeds, are continuously appropriated to the department. The department shall
5 deposit net receipts from the auction required under this section in the Opportunity Grant
6 Fund.

7 (b) The commission may adopt rules necessary for the administration of the auction.

8 (3) Contributions made under this section shall be deposited in the Opportunity Grant
9 Fund.

10 (4)(a) Upon receipt of a contribution, the commission shall, except as provided in section
11 3 of this 2018 Act, issue to the taxpayer written certification of the amount certified for tax
12 credit under this section to the extent the amount certified for tax credit, when added to all
13 amounts previously certified for tax credit under this section, does not exceed \$14 million for
14 the fiscal year in which certification is made.

15 (b) The commission and the department are not liable, and a refund of a contributed
16 amount need not be made, if a taxpayer that has received tax credit certification is unable
17 to use all or a portion of the tax credit to offset the tax liability of the taxpayer.

18 (5) To the extent the commission does not certify contributed amounts as eligible for a
19 tax credit under this section, the taxpayer may request a refund of the amount the taxpayer
20 contributed, and the commission shall refund that amount.

21 (6)(a) Except as provided in paragraph (b) of this subsection, a tax credit claimed under
22 this section may not exceed the tax liability of the taxpayer and may not be carried over to
23 another tax year.

24 (b) Any tax credit otherwise allowable under this section that is not used by the taxpayer
25 in a particular tax year may be carried forward and offset against the taxpayer's tax liability
26 for the next succeeding tax year. Any credit remaining unused in the next succeeding tax
27 year may be carried forward and used in the second succeeding tax year, and likewise, any
28 credit not used in that second succeeding tax year may be carried forward and used in the
29 third succeeding tax year but may not be carried forward for any tax year thereafter.

30 (c) A taxpayer is not eligible for a tax credit under this section if the first tax year for
31 which the credit would otherwise be allowed begins on or after January 1, 2024.

32 (7) If a tax credit is claimed under this section by a nonresident or part-year resident
33 taxpayer, the amount shall be allowed without proration under ORS 316.117.

34 (8) If the amount of contribution for which a tax credit certification is made is allowed
35 as a deduction for federal tax purposes, the amount of the contribution shall be added to
36 federal taxable income for Oregon tax purposes.

37 **SECTION 3.** (1) In lieu of the issuance of certifications for tax credit under section 2 of
38 this 2018 Act by the Higher Education Coordinating Commission, the Legislative Assembly
39 may, no later than 30 days prior to the end of each fiscal year, appropriate to the commission
40 for deposit into the Opportunity Grant Fund established under section 4 of this 2018 Act an
41 amount equal to the total amount that would otherwise be certified for tax credits during
42 the upcoming fiscal year, based on the amount of contributions and accompanying applica-
43 tions for credit received by the commission during the fiscal year.

44 (2) If the Legislative Assembly makes the election allowed in subsection (1) of this sec-
45 tion:

1 (a) Any contributions to the Opportunity Grant Fund made for the upcoming fiscal year
2 and for which an application for a credit under section 2 of this 2018 Act is pending shall,
3 at the request of the taxpayer, be refunded by the commission; and

4 (b) A credit under section 2 of this 2018 Act may not be claimed for any contribution
5 made during the current fiscal year.

6 **SECTION 4.** (1) The Opportunity Grant Fund is established in the State Treasury, sepa-
7 rate and distinct from the General Fund. Interest earned by the Opportunity Grant Fund
8 shall be credited to the fund.

9 (2) Moneys in the Opportunity Grant Fund shall consist of:

10 (a) Amounts donated to the fund;

11 (b) Amounts appropriated or otherwise transferred to the fund by the Legislative As-
12 sembly;

13 (c) Other amounts deposited in the fund from any source; and

14 (d) Interest earned by the fund.

15 (3) Moneys in the fund are continuously appropriated to the Higher Education Coordi-
16 nating Commission. After the payment of refunds to taxpayers as described in sections 2 and
17 3 of this 2018 Act and payments to a tax credit marketer for marketing services provided by
18 the marketer as described in section 5 of this 2018 Act, the balance remaining in the fund
19 shall be used for the Oregon Opportunity Grant program under ORS 348.260.

20 (4) Expenditures from the fund are not subject to ORS 291.232 to 291.260.

21 **SECTION 5.** The Higher Education Coordinating Commission may hire or contract with
22 a marketer to market the tax credits described in section 2 of this 2018 Act to taxpayers.

23 **SECTION 6.** Sections 2, 3 and 5 of this 2018 Act apply to tax years beginning on or after
24 January 1, 2018, and before January 1, 2024.

25 **SECTION 7.** ORS 314.752 is amended to read:

26 314.752. (1) Except as provided in ORS 314.740 (5)(b), the tax credits allowed or allowable to a
27 C corporation for purposes of ORS chapter 317 or 318 shall not be allowed to an S corporation. The
28 business tax credits allowed or allowable for purposes of ORS chapter 316 shall be allowed or are
29 allowable to the shareholders of the S corporation.

30 (2) In determining the tax imposed under ORS chapter 316, as provided under ORS 314.734, on
31 income of the shareholder of an S corporation, there shall be taken into account the shareholder's
32 pro rata share of business tax credit (or item thereof) that would be allowed to the corporation (but
33 for subsection (1) of this section) or recapture or recovery thereof. The credit (or item thereof), re-
34 capture or recovery shall be passed through to shareholders in pro rata shares as determined in the
35 manner prescribed under section 1377(a) of the Internal Revenue Code.

36 (3) The character of any item included in a shareholder's pro rata share under subsection (2)
37 of this section shall be determined as if such item were realized directly from the source from which
38 realized by the corporation, or incurred in the same manner as incurred by the corporation.

39 (4) If the shareholder is a nonresident and there is a requirement applicable for the business tax
40 credit that in the case of a nonresident the credit be allowed in the proportion provided in ORS
41 316.117, then that provision shall apply to the nonresident shareholder.

42 (5) As used in this section, "business tax credit" means the following credits: ORS 315.104
43 (forestation and reforestation), ORS 315.138 (fish screening, by-pass devices, fishways), ORS 315.141
44 (biomass production for biofuel), ORS 315.156 (crop gleanings), ORS 315.164 and 315.169 (agriculture
45 workforce housing), ORS 315.176 (bovine manure), ORS 315.204 (dependent care assistance), ORS

1 315.208 (dependent care facilities), ORS 315.213 (contributions for child care), ORS 315.237 (employee
 2 and dependent scholarships), ORS 315.271 (individual development accounts), ORS 315.304 (pollution
 3 control facility), ORS 315.326 (renewable energy development contributions), ORS 315.331 (energy
 4 conservation projects), ORS 315.336 (transportation projects), ORS 315.341 (renewable energy re-
 5 source equipment manufacturing facilities), ORS 315.354 and 469B.151 (energy conservation facili-
 6 ties), ORS 315.506 (tribal taxes on reservation enterprise zones and reservation partnership zones),
 7 ORS 315.507 (electronic commerce), ORS 315.514 (film production development contributions), ORS
 8 315.521 (university venture development funds), ORS 315.523 (employee training programs), ORS
 9 315.533 (low income community jobs initiative), ORS 315.675 (Trust for Cultural Development Ac-
 10 count contributions), ORS 317.097 (loans for affordable housing), ORS 317.124 (long term enterprise
 11 zone facilities), ORS 317.147 (loans for agriculture workforce housing), ORS 317.152 (qualified re-
 12 search expenses) and ORS 317.154 (alternative qualified research expenses) and section 9, chapter
 13 774, Oregon Laws 2013 (alternative fuel vehicle contributions) **and section 2 of this 2018 Act**
 14 **(Opportunity Grant Fund contributions).**

15 **SECTION 8.** ORS 318.031 is amended to read:

16 318.031. It being the intention of the Legislative Assembly that this chapter and ORS chapter
 17 317 shall be administered as uniformly as possible (allowance being made for the difference in im-
 18 position of the taxes), ORS 305.140 and 305.150, ORS chapter 314 and the following sections are in-
 19 corporated into and made a part of this chapter: ORS 315.104, 315.141, 315.156, 315.176, 315.204,
 20 315.208, 315.213, 315.304, 315.326, 315.331, 315.336, 315.506, 315.507, 315.523 and 315.533 **and section**
 21 **2 of this 2018 Act** (all only to the extent applicable to a corporation) and ORS chapter 317.

22 **SECTION 9. Section 10 of this 2018 Act is added to and made a part of ORS chapter 316.**

23 **SECTION 10. There shall be added to federal taxable income for Oregon tax purposes the**
 24 **amount allowable as a deduction under section 199A(a) of the Internal Revenue Code for the**
 25 **tax year.**

26 **SECTION 11. Section 10 of this 2018 Act applies to tax years beginning on or after Jan-**
 27 **uary 1, 2018.**

28 **SECTION 12.** ORS 316.043 is amended to read:

29 316.043. (1) As used in this section:

30 (a) “Material participation” has the meaning given that term in section 469 of the Internal Re-
 31 venue Code.

32 (b) “Nonpassive income” means income other than income from passive activity as determined
 33 under section 469 of the Internal Revenue Code. “Nonpassive income” does not include wages, in-
 34 terest, dividends or capital gains.

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

37 (2) If a taxpayer that meets the conditions of subsection [(6)] (5) of this section has nonpassive
 38 income attributable to any partnership or S corporation after reduction for nonpassive losses **or**
 39 **does business as a sole proprietorship**, that portion of the taxpayer’s income, **not to exceed**
 40 **\$250,000**, that meets the conditions of subsection [(6)] (5) of this section shall be taxed at:

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

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

43 [(A)] seven percent of the first \$250,000 of taxable income, or fraction thereof;].

44 [(B)] *Seven and two-tenths percent of taxable income exceeding \$250,000 but not exceeding*
 45 *\$500,000;*]

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

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

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

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

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

8 [(4) (3) A taxpayer shall use the subtractions, deductions or additions otherwise allowed under
9 this chapter in the calculation of income that is taxed at the rates otherwise applicable under ORS
10 316.037. The only addition or subtraction allowed in the calculation of [*nonpassive*] income for which
11 the taxpayer uses the reduced [*rates*] **rate** allowed under subsection (2)(b) of this section shall be
12 any depreciation adjustment directly related to the partnership, [*or*] S corporation **or sole**
13 **proprietorship**.

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

21 [(6) (5) The [*rates listed in*] **rate allowed under** subsection (2)(b) of this section [*apply*] **applies**
22 to [*nonpassive*] income attributable to a partnership, [*or*] S corporation **or sole proprietorship** only
23 if:

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

25 (b) The partnership, [*or*] S corporation **or sole proprietorship** employs at least one person who
26 is not an owner, member or limited partner of the partnership or S corporation[; *and*] **or the owner**
27 **of the sole proprietorship**.

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

33 (d) **The hours of employment required under this subsection are not performed in in-**
34 **dustry in the following sectors, as denoted by the North American Industry Classification**
35 **System codes:**

36 (A) **Professional, scientific and technical services (54); or**

37 (B) **Health care and social assistance (62).**

38 (6) **A taxpayer doing business as a sole proprietorship shall apply the reduced rate to the**
39 **sole proprietorship's net profit as reported on the taxpayer's return.**

40 (7)(a) A nonresident may apply the reduced [*rates*] **rate** 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*] **rate** allowed under
43 subsection (2)(b) of this section by first applying [*those rates*] **the rate** to the taxpayer's
44 [*nonpassive*] income that meets the requirements of subsection [(6) (5)] of this section, and then
45 multiplying that amount by the ratio of the taxpayer's [*nonpassive*] income in Oregon divided by

1 *[nonpassive]* income from all sources.

2 **SECTION 13.** The amendments to ORS 316.043 by section 12 of this 2018 Act apply to tax
3 years beginning on or after January 1, 2018.

4 **SECTION 14.** 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 12 of this 2018 Act.

7 **SECTION 15.** Section 14 of this 2018 Act applies to tax years beginning on or after Jan-
8 uary 1, 2018, and before January 1, 2019.

9 **SECTION 16.** ORS 316.085 is amended to read:

10 316.085. (1)(a) There shall be allowed a personal exemption credit against taxes otherwise due
11 under this chapter. The credit shall equal [~~\$90~~] **\$113** multiplied by the number of personal ex-
12 emptions allowed under section 151 of the Internal Revenue Code.

13 (b) In the case of an individual with respect to whom a credit under paragraph (a) of this sub-
14 section is allowable to another taxpayer for a taxable year beginning in the calendar year in which
15 the individual's taxable year begins, the credit amount applicable to such individual for such
16 individual's taxable year is zero.

17 (2)(a) A nonresident shall be allowed the credit provided under subsection (1) of this section
18 computed in the same manner and subject to the same limitations as the credit allowed to a resident
19 of this state. However, the credit shall be prorated using the proportion provided in ORS 316.117.

20 (b) If a change in the taxable year of a taxpayer occurs as described in ORS 314.085, or if the
21 Department of Revenue terminates the taxpayer's taxable year under ORS 314.440, the credit al-
22 lowed by this section shall be prorated or computed in a manner consistent with ORS 314.085.

23 (c) If a change in the status of a taxpayer from resident to nonresident or from nonresident to
24 resident occurs, the credit allowed by this section shall be determined in a manner consistent with
25 ORS 316.117.

26 (3) The Department of Revenue shall recompute the dollar amount of the personal exemption
27 credit allowed for state personal income tax purposes. The computation shall be as follows:

28 (a) Divide the monthly averaged U.S. City Average Consumer Price Index for the 12 consecutive
29 months ending August 31 of the prior calendar year by the monthly averaged index for the first six
30 months of 1986.

31 (b) Recompute the dollar amount of the personal exemption credit by multiplying [~~\$90~~] **\$113** by
32 the appropriate indexing factor determined as provided in paragraph (a) of this subsection. Round
33 off the amount obtained under this paragraph to the nearest \$1.

34 (4) As used in this section, "U.S. City Average Consumer Price Index" means the U.S. City Av-
35 erage Consumer Price Index for All Urban Consumers (All Items) as published by the Bureau of
36 Labor Statistics of the United States Department of Labor.

37 (5) Notwithstanding subsections (1) to (3) of this section, a taxpayer may not claim the personal
38 exemption credit otherwise allowed under this section if the taxpayer's federal adjusted gross in-
39 come for the tax year exceeds \$200,000 for joint return filers, a surviving spouse or a head of
40 household, or \$100,000 for an individual who is not a married individual and is not a surviving
41 spouse, or is a married individual who files a separate return.

42 **SECTION 17.** ORS 316.085, as amended by section 16 of this 2018 Act, is amended to read:

43 316.085. (1)(a) There shall be allowed a personal exemption credit against taxes otherwise due
44 under this chapter. The credit shall equal [~~\$113~~] **\$90** multiplied by the number of personal ex-
45 emptions allowed under section 151 of the Internal Revenue Code.

1 (b) In the case of an individual with respect to whom a credit under paragraph (a) of this sub-
2 section is allowable to another taxpayer for a taxable year beginning in the calendar year in which
3 the individual's taxable year begins, the credit amount applicable to such individual for such
4 individual's taxable year is zero.

5 (2)(a) A nonresident shall be allowed the credit provided under subsection (1) of this section
6 computed in the same manner and subject to the same limitations as the credit allowed to a resident
7 of this state. However, the credit shall be prorated using the proportion provided in ORS 316.117.

8 (b) If a change in the taxable year of a taxpayer occurs as described in ORS 314.085, or if the
9 Department of Revenue terminates the taxpayer's taxable year under ORS 314.440, the credit al-
10 lowed by this section shall be prorated or computed in a manner consistent with ORS 314.085.

11 (c) If a change in the status of a taxpayer from resident to nonresident or from nonresident to
12 resident occurs, the credit allowed by this section shall be determined in a manner consistent with
13 ORS 316.117.

14 (3) The Department of Revenue shall recompute the dollar amount of the personal exemption
15 credit allowed for state personal income tax purposes. The computation shall be as follows:

16 (a) Divide the monthly averaged U.S. City Average Consumer Price Index for the 12 consecutive
17 months ending August 31 of the prior calendar year by the monthly averaged index for the first six
18 months of 1986.

19 (b) Recompute the dollar amount of the personal exemption credit by multiplying [~~\$113~~] **\$90** by
20 the appropriate indexing factor determined as provided in paragraph (a) of this subsection. Round
21 off the amount obtained under this paragraph to the nearest \$1.

22 (4) As used in this section, "U.S. City Average Consumer Price Index" means the U.S. City Av-
23 erage Consumer Price Index for All Urban Consumers (All Items) as published by the Bureau of
24 Labor Statistics of the United States Department of Labor.

25 (5) Notwithstanding subsections (1) to (3) of this section, a taxpayer may not claim the personal
26 exemption credit otherwise allowed under this section if the taxpayer's federal adjusted gross in-
27 come for the tax year exceeds \$200,000 for joint return filers, a surviving spouse or a head of
28 household, or \$100,000 for an individual who is not a married individual and is not a surviving
29 spouse, or is a married individual who files a separate return.

30 **SECTION 18. (1) The amendments to ORS 316.085 by section 16 of this 2018 Act apply to**
31 **tax years beginning on or after January 1, 2018, and before January 1, 2026.**

32 **(2) The amendments to ORS 316.085 by section 17 of this 2018 Act apply to tax years be-**
33 **ginning on or after January 1, 2026.**

34 **SECTION 19. ORS 316.044 is repealed.**

35 **SECTION 20. This 2018 Act takes effect on the 91st day after the date on which the 2018**
36 **regular session of the Seventy-ninth Legislative Assembly adjourns sine die.**

37