PROPOSED AMENDMENTS TO
HOUSE BILL 4026

In line 2 of the printed bill, after the first semicolon delete the rest of the line and insert “creating new provisions; amending ORS 316.043 and 317.267; repealing ORS 316.044; and prescribing an effective date.”.

Delete lines 4 through 22 and insert:

“SECTION 1. ORS 317.267 is amended to read:

“317.267. (1) To derive Oregon taxable income, there shall be added to federal taxable income amounts received as dividends from corporations deducted for federal purposes pursuant to section 243 [or], 245 or 965 of the Internal Revenue Code, except section 245(c) of the Internal Revenue Code, amounts paid as dividends by a public utility or telecommunications utility and deducted for federal purposes pursuant to section 247 of the Internal Revenue Code or dividends eliminated under Treasury Regulations adopted under section 1502 of the Internal Revenue Code that are paid by members of an affiliated group that are eliminated from a consolidated federal return pursuant to ORS 317.715 (2).

“(2) To derive Oregon taxable income, after the modification prescribed under subsection (1) of this section, there shall be subtracted from federal taxable income an amount equal to 70 percent of dividends (determined without regard to section 78 of the Internal Revenue Code) received or deemed received from corporations if such dividends are included in federal taxable income. However:
“(a) In the case of any dividend on debt-financed portfolio stock as described in section 246A of the Internal Revenue Code, the subtraction allowed under this subsection shall be reduced under the same conditions and in same amount as the dividends received deduction otherwise allowable for federal income tax purposes is reduced under section 246A of the Internal Revenue Code.

“(b) In the case of any dividend received from a 20 percent owned corporation, as defined in section 243(c) of the Internal Revenue Code, this subsection shall be applied by substituting ‘80 percent’ for ‘70 percent.’

“(c) A dividend that is not treated as a dividend under section 243(d) or 965(c)(3) of the Internal Revenue Code may not be treated as a dividend for purposes of this subsection.

“(d) If a dividends received deduction is not allowed for federal tax purposes because of section 246(a) or (c) of the Internal Revenue Code, a subtraction may not be made under this subsection for received dividends that are described in section 246(a) or (c) of the Internal Revenue Code.

“(e) In the case of any dividend received from an alien, domestic or foreign insurer, as defined in ORS 731.082, that would be included in the taxpayer’s consolidated Oregon return but for the application of ORS 317.710 (5) or (7), this subsection shall be applied by substituting ‘100 percent’ for ‘70 percent.’

“(f) A dividends received deduction is not allowed for dividends deemed received under section 965 of the Internal Revenue Code.

“(3) There shall be excluded from the sales factor of any apportionment formula employed to attribute income to this state any amount subtracted from federal taxable income under subsection (2) of this section.

“SECTION 2. The amendments to ORS 317.267 by section 1 of this 2018 Act apply to tax years beginning on or after January 1, 2017.

“SECTION 3. Section 4 of this 2018 Act is added to and made a part of ORS chapter 316.
“SECTION 4. There shall be added to federal taxable income for Oregon tax purposes the amount allowable as a deduction under section 199A(a) of the Internal Revenue Code for the tax year.

“SECTION 5. Section 4 of this 2018 Act applies to tax years beginning on or after January 1, 2018.

“SECTION 6. ORS 316.043 is amended to read:

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

(a) ‘Material participation’ has the meaning given that term in section 469 of the Internal Revenue Code.

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

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

“(2) If a taxpayer that meets the conditions of subsection [(6)] (5) of this section has nonpassive income attributable to any partnership or S corporation after reduction for nonpassive losses, that portion of the taxpayer’s income, not to exceed $250,000, that meets the conditions of subsection [(6)] (5) of this section shall be taxed at:

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

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

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

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

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

“[(D)] Eight percent of taxable income exceeding $1 million but not exceeding $2.5 million[;]
“[E] Nine percent of taxable income exceeding $2.5 million but not exceeding $5 million; and]"

“[F] Nine and nine-tenths percent of taxable income exceeding $5 million.]"

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

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

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

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

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

“(b) The partnership or S corporation employs at least one person who is not an owner, member or limited partner of the partnership or S corporation; and

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

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

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

“SECTION 7. The amendments to ORS 316.043 by section 6 of this 2018 Act apply to tax years beginning on or after January 1, 2019.

“SECTION 8. The Department of Revenue shall waive any interest that would otherwise apply to taxes due if the interest is based on underpayment or underreporting that results solely from the amendments to ORS 316.043 by section 6 of this 2018 Act.

“SECTION 9. Section 8 of this 2018 Act applies to tax years beginning on or after January 1, 2019, and before January 1, 2020.

“SECTION 10. ORS 316.044 is repealed.

“SECTION 11. This 2018 Act takes effect on the 91st day after the date on which the 2018 regular session of the Seventy-ninth Legislative Assembly adjourns sine die.”.