74th OREGON LEGISLATIVE ASSEMBLY--2007 Regular Session

House Bill 2690

Sponsored by Representative BUTLER

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.**

Eliminates taxes on capital gains. Phases in elimination over five years.

A BILL FOR AN ACT

Relating to taxation of capital gains; creating new provisions; and amending ORS 316.045 and 317.063.

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

SECTION 1. Sections 2 and 4 of this 2007 Act are added to and made a part of ORS chapter 316.

SECTION 2. In addition to the other modifications to federal taxable income contained in this chapter, to derive Oregon taxable income there shall be subtracted from federal taxable income the net capital gain incurred by the taxpayer during the tax year that is included in federal taxable income for Oregon tax purposes.

SECTION 3. Section 2 of this 2007 Act applies to tax years beginning on or after January 1, 2008.

SECTION 4. Notwithstanding section 2 of this 2007 Act, the subtraction allowed under section 2 of this 2007 Act shall be computed as follows:

(1) For tax years beginning on or after January 1, 2008, and before January 1, 2009, 20 percent of the net capital gain incurred by the taxpayer during the tax year that is included in federal taxable income for Oregon tax purposes shall be subtracted from federal taxable income.

(2) For tax years beginning on or after January 1, 2009, and before January 1, 2010, 40 percent of the net capital gain incurred by the taxpayer during the tax year that is included in federal taxable income for Oregon tax purposes shall be subtracted from federal taxable income.

(3) For tax years beginning on or after January 1, 2010, and before January 1, 2011, 60 percent of the net capital gain incurred by the taxpayer during the tax year that is included in federal taxable income for Oregon tax purposes shall be subtracted from federal taxable income.

(4) For tax years beginning on or after January 1, 2011, and before January 1, 2012, 80 percent of the net capital gain incurred by the taxpayer during the tax year that is included in federal taxable income for Oregon tax purposes shall be subtracted from federal taxable income.

SECTION 5. ORS 316.045 is amended to read:

316.045. (1) As used in this section:

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.

(a) "Farming" means:

(A) Raising, harvesting and selling crops;

(B) Feeding, breeding, managing or selling livestock, poultry, fur-bearing animals or honeybees or the produce thereof;

(C) Dairying and selling dairy products;

(D) Stabling or training equines, including but not limited to providing riding lessons, training clinics and schooling shows;

(E) Propagating, cultivating, maintaining or harvesting aquatic species and bird and animal species to the extent allowed by the rules adopted by the State Fish and Wildlife Commission;

(F) On-site constructing and maintaining equipment and facilities used for the activities described in this subsection;

(G) Preparing, storing or disposing of, by marketing or otherwise, the products or by-products raised for human or animal use on land employed in activities described in this subsection; or

(H) Any other agricultural or horticultural activity or animal husbandry, or any combination of these activities, except that "farming" does not include growing and harvesting trees of a marketable species other than growing and harvesting cultured Christmas trees or certain hardwood timber described in ORS 321.267 (3) or 321.824 (3).

(b) "Section 1231 gain" has the meaning given that term in section 1231 of the Internal Revenue Code.

(2) Notwithstanding ORS 316.037, taxable income that consists of net long-term capital gain shall be subject to tax under this chapter at a rate of five percent if all of the following conditions apply:

(a) The gain is:

(A) Derived from the sale or exchange of capital assets consisting of ownership interests in a corporation, partnership or other entity in which, prior to the sale or exchange, the taxpayer owned at least a 10 percent ownership interest; or

(B) Section 1231 gain.

(b) The property that was sold or exchanged consisted of:

(A) Ownership interests in a corporation, partnership or other entity that is engaged in the trade or business of farming; or

(B) Property that is predominantly used in the trade or business of farming.

(c) The sale or exchange is to a person who is not related to the taxpayer under section 267 of the Internal Revenue Code.

(d) The sale or exchange constitutes a substantially complete termination of all of the taxpayer's ownership interests in a trade or business that is engaged in farming or a substantially complete termination of all of the taxpayer's ownership interests in property that is employed in the trade or business of farming. Ownership of a farm dwelling or farm homesite does not constitute ownership of property employed in the trade or business of farming.

(3) If the taxpayer has net long-term capital gain derived in part from the sale or exchange of property described in subsection (2)(b) of this section and in part from the sale or exchange of all other property, the net long-term capital gain that is subject to tax under this section shall be determined as follows:

(a) Compute the net long-term capital gain derived from all property described in subsection (2)(b) of this section that was sold or exchanged during the tax year.

(b) Compute the net capital gain or loss from the sale or exchange of all other property during the tax year.

(c) If the amount determined under paragraph (b) of this subsection is a net capital gain, the gain that is subject to tax under subsection (2) of this section shall be the amount determined under paragraph (a) of this subsection.

(d) If the amount determined under paragraph (b) of this subsection is a net capital loss, the gain that is subject to tax under subsection (2) of this section shall be the amount determined under paragraph (a) of this subsection minus the amount determined under paragraph (b) of this subsection.

(4) If a taxpayer claims a subtraction under section 2 or 4 of this 2007 Act for the tax year, any net long-term capital gain that would otherwise be subject to tax under this section shall be subject to tax at the rates established under ORS 316.037 for that tax year.

SECTION 6. The amendments to ORS 316.045 by section 5 of this 2007 Act apply to tax years beginning on or after January 1, 2008.

SECTION 7. Sections 8 and 10 of this 2007 Act are added to and made a part of ORS chapter 317.

SECTION 8. In addition to the other modifications to federal taxable income contained in this chapter, to derive Oregon taxable income there shall be subtracted from federal taxable income the net capital gain incurred by the corporation during the tax year that is included in federal taxable income for Oregon tax purposes.

SECTION 9. Section 8 of this 2007 Act applies to tax years beginning on or after January 1, 2008.

SECTION 10. Notwithstanding section 8 of this 2007 Act, the subtraction allowed under section 8 of this 2007 Act shall be computed as follows:

(1) For tax years beginning on or after January 1, 2008, and before January 1, 2009, 20 percent of the net capital gain incurred by the corporation during the tax year that is included in federal taxable income for Oregon tax purposes shall be subtracted from federal taxable income.

(2) For tax years beginning on or after January 1, 2009, and before January 1, 2010, 40 percent of the net capital gain incurred by the corporation during the tax year that is included in federal taxable income for Oregon tax purposes shall be subtracted from federal taxable income.

(3) For tax years beginning on or after January 1, 2010, and before January 1, 2011, 60 percent of the net capital gain incurred by the corporation during the tax year that is included in federal taxable income for Oregon tax purposes shall be subtracted from federal taxable income.

(4) For tax years beginning on or after January 1, 2011, and before January 1, 2012, 80 percent of the net capital gain incurred by the corporation during the tax year that is included in federal taxable income for Oregon tax purposes shall be subtracted from federal taxable income.

SECTION 11. ORS 317.063 is amended to read:

317.063. (1) As used in this section:

(a) "Farming" means:

(A) Raising, harvesting and selling crops;

(B) Feeding, breeding, managing or selling livestock, poultry, fur-bearing animals or honeybees or the produce thereof;

(C) Dairying and selling dairy products;

(D) Stabling or training equines, including but not limited to providing riding lessons, training clinics and schooling shows;

(E) Propagating, cultivating, maintaining or harvesting aquatic species and bird and animal species to the extent allowed by the rules adopted by the State Fish and Wildlife Commission;

(F) On-site constructing and maintaining equipment and facilities used for the activities described in this subsection;

(G) Preparing, storing or disposing of, by marketing or otherwise, the products or by-products raised for human or animal use on land employed in activities described in this subsection; or

(H) Any other agricultural or horticultural activity or animal husbandry, or any combination of these activities, except that "farming" does not include growing and harvesting trees of a marketable species other than growing and harvesting cultured Christmas trees or certain hardwood timber described in ORS 321.267 (3) or 321.824 (3).

(b) "Section 1231 gain" has the meaning given that term in section 1231 of the Internal Revenue Code.

(2) Notwithstanding ORS 317.061, taxable income that consists of net long-term capital gain shall be subject to tax under this chapter at a rate of five percent if all of the following conditions apply:

(a) The gain is:

(A) Derived from the sale or exchange of capital assets consisting of ownership interests in a corporation, partnership or other entity in which, prior to the sale or exchange, the taxpayer owned at least a 10 percent ownership interest; or

(B) Section 1231 gain.

(b) The property that was sold or exchanged consisted of:

(A) Ownership interests in a corporation, partnership or other entity that is engaged in the trade or business of farming; or

(B) Property that is predominantly used in the trade or business of farming.

(c) The sale or exchange is to a person who is not related to the taxpayer under section 267 of the Internal Revenue Code.

(d) The sale or exchange constitutes a substantially complete termination of all of the taxpayer's ownership interests in a trade or business that is engaged in farming or a substantially complete termination of all of the taxpayer's ownership interests in property that is employed in the trade or business of farming.

(3) If the taxpayer has net long-term capital gain derived in part from the sale or exchange of property described in subsection (2)(b) of this section and in part from the sale or exchange of all other property, the net long-term capital gain that is subject to tax under this section shall be determined as follows:

(a) Compute the net long-term capital gain derived from all property described in subsection (2)(b) of this section that was sold or exchanged during the tax year.

(b) Compute the net capital gain or loss from the sale or exchange of all other property during the tax year.

(c) If the amount determined under paragraph (b) of this subsection is a net capital gain, the gain that is subject to tax under subsection (2) of this section shall be the amount determined under paragraph (a) of this subsection.

(d) If the amount determined under paragraph (b) of this subsection is a net capital loss, the gain that is subject to tax under subsection (2) of this section shall be the amount determined under paragraph (a) of this subsection minus the amount determined under paragraph (b) of this subsection.

(4) If a taxpayer claims a subtraction under section 8 or 10 of this 2007 Act for the tax

year, any net long-term capital gain that would otherwise be subject to tax under this section shall be subject to tax at the rate established in ORS 317.061 for the tax year.

SECTION 12. The amendments to ORS 317.063 by section 11 of this 2007 Act apply to tax years beginning on or after January 1, 2008.