

Senate Bill 197

Sponsored by Senator FERRIOLI (Pre-session filed.)

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**.

Modifies provisions allowing for optional reduced rates of personal income tax on nonpassive income. Expands availability to all pass-through entities. Adjusts rate thresholds using consumer price index. Provides for estimate forming basis of possible rate adjustment to be performed using provisions as modified in Act.

Takes effect on 91st day following adjournment sine die.

A BILL FOR AN ACT

1
2 Relating to reductions in taxes; amending ORS 316.043 and 316.044; and prescribing an effective
3 date.

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

5 **SECTION 1.** ORS 316.043, as amended by section 6, chapter 114, Oregon Laws 2014, is amended
6 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* **condition** of subsection [(6)] (7) of this section has
16 nonpassive income attributable to any partnership or S corporation, **sole proprietorship, single**
17 **member limited liability company or any other pass-through entity**, after reduction for non-
18 passive losses, that portion of the taxpayer's income that meets the *conditions* **condition** of sub-
19 section [(6)] (7) of this section shall be taxed at:

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

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

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

23 (B) Seven and two-tenths percent of taxable income exceeding \$250,000 but not exceeding
24 \$500,000;

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

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

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

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

30 **(3)(a) Beginning in 2017, the Department of Revenue shall annually adjust the income**

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 **thresholds listed in subsection (2) of this section according to the cost-of-living adjustment**
 2 **for the calendar year. The department shall make the adjustment by multiplying the**
 3 **threshold dollar amounts in subsection (2) of this section by the percentage (if any) by which**
 4 **the monthly averaged U.S. City Average Consumer Price Index for the 12 consecutive**
 5 **months ending August 31 of the prior calendar year exceeds the monthly averaged U.S. City**
 6 **Average Consumer Price Index for the 12 consecutive months ending August 31, 2015.**

7 **(b) As used in this subsection, “U.S. City Average Consumer Price Index” means the U.S.**
 8 **City Average Consumer Price Index for All Urban Consumers (All Items) as published by the**
 9 **Bureau of Labor Statistics of the United States Department of Labor.**

10 [(3)] (4) The reduced rates allowed under subsection (2)(b) of this section may be adjusted as
 11 provided in ORS 316.044.

12 [(4)] (5) A taxpayer shall use the subtractions, deductions or additions otherwise allowed under
 13 this chapter in the calculation of income that is taxed at the rates otherwise applicable under ORS
 14 316.037. The only addition or subtraction allowed in the calculation of nonpassive income for which
 15 the taxpayer uses the reduced rates allowed under subsection (2)(b) of this section shall be any de-
 16 preciation adjustment directly related to the [*partnership or S corporation*] **pass-through entity**.

17 [(5)] (6) The election under subsection (2)(b) of this section [*shall be irrevocable and shall*] **may**
 18 **be revoked and may** be made on the taxpayer’s original **or amended** return. If the taxpayer uses
 19 the reduced rates allowed under subsection (2)(b) of this section, the calculation of income shall be
 20 substantiated on a form prescribed by the Department of Revenue and filed with the taxpayer’s tax
 21 return for the tax year or at such other time and manner as the department may prescribe by rule.
 22 A taxpayer who uses the reduced rates available under subsection (2)(b) of this section may not join
 23 in the filing of a composite return under ORS 314.778.

24 [(6)] (7) The rates listed in subsection (2)(b) of this section apply to nonpassive income attrib-
 25 utable to a [*partnership or S corporation*] **pass-through entity** only if[.]

26 [(a)] the taxpayer materially participates in the trade or business.[.]

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

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

34 [(7)(a)] (8)(a) A nonresident may apply the reduced rates allowed under subsection (2)(b) of this
 35 section only to income earned in Oregon.

36 (b) A part-year resident shall calculate the tax due using the reduced rates allowed under sub-
 37 section (2)(b) of this section by first applying those rates to the taxpayer’s nonpassive income that
 38 meets the [*requirements*] **condition** of subsection [(6)] (7) of this section, and then multiplying that
 39 amount by the ratio of the taxpayer’s nonpassive income in Oregon divided by nonpassive income
 40 from all sources.

41 **SECTION 2.** ORS 316.044 is amended to read:

42 316.044. (1)(a) As soon as practicable, the Legislative Revenue Officer, after consultation with
 43 the Department of Revenue, shall prepare estimates of projected use by taxpayers of the reduced
 44 rates provided in ORS 316.043 (2). The estimates shall **be based on ORS 316.043, as amended by**
 45 **section 1 of this 2015 Act, and shall** include the projected use of the reduced rates in tax years

1 beginning on or after January 1, 2015, and before January 1, 2017, and in tax years beginning on
2 or after January 1, 2019, and before January 1, 2021. The estimates shall express as a ratio the re-
3 venue loss anticipated as a result of the reduced rates of taxation in ORS 316.043 (2), divided by
4 projected total income in this state, for those tax years.

5 (b) Not later than July 1, 2018, the Legislative Revenue Officer shall report to an interim com-
6 mittee of the Legislative Assembly related to revenue regarding the use of the reduced rates pro-
7 vided in ORS 316.043 (2). The report shall express as a ratio, for tax years beginning on or after
8 January 1, 2015, and before January 1, 2017, the actual revenue loss resulting from the allowance
9 of reduced rates of taxation provided in ORS 316.043 (2) divided by actual total income in this state
10 for those tax years. If the ratio exceeds the ratio calculated under paragraph (a) of this subsection
11 by more than 15 percent, the rates listed in ORS 316.043 (2) shall be proportionately adjusted to
12 achieve a ratio of approximately 105 percent of the ratio calculated in subsection (1)(a) of this sec-
13 tion for tax years beginning on or after January 1, 2015, and before January 1, 2017, but may in no
14 event exceed 9.9 percent of taxable income or be reduced to less than the original rate provided in
15 ORS 316.043 (2).

16 (c) The adjusted rates provided under paragraph (b) of this subsection shall apply to tax years
17 beginning on or after January 1, 2019.

18 (2)(a) Not later than July 1, 2022, the Legislative Revenue Officer shall report to an interim
19 committee of the Legislative Assembly related to revenue regarding the use of the reduced rates
20 provided in ORS 316.043 (2). The report shall express as a ratio, for tax years beginning on or after
21 January 1, 2019, and before January 1, 2021, the actual revenue loss resulting from the allowance
22 of reduced rates of taxation provided in ORS 316.043 (2) divided by actual total income in this state
23 for those tax years. If the ratio exceeds the ratio included in the estimate required under subsection
24 (1)(a) of this section for tax years beginning on or after January 1, 2019, and before January 1, 2021,
25 by more than 25 percent, the rates listed in ORS 316.043 (2) shall be proportionately adjusted to
26 achieve a ratio of approximately 115 percent of the ratio calculated in subsection (1)(a) of this sec-
27 tion for tax years beginning on or after January 1, 2019, and before January 1, 2021. If the ratio is
28 less than 75 percent of the ratio included in the estimate required under subsection (1)(a) of this
29 section for tax years beginning on or after January 1, 2019, and before January 1, 2021, the rates
30 listed in ORS 316.043 (2) shall be proportionately adjusted to achieve a ratio of approximately 85
31 percent of the ratio calculated in subsection (1)(a) of this section for tax years beginning on or after
32 January 1, 2019, and before January 1, 2021. The adjusted rates under this subsection may in no
33 event exceed 9.9 percent of taxable income or be reduced to lower than the original rate provided
34 in ORS 316.043 (2).

35 (b) The adjusted rates provided under paragraph (a) of this subsection shall apply to tax years
36 beginning on or after January 1, 2023.

37 **SECTION 3. This 2015 Act takes effect on the 91st day after the date on which the 2015**
38 **regular session of the Seventy-eighth Legislative Assembly adjourns sine die.**