

# House Bill 3358

Sponsored by Representative PHAM

## 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**.

Disallows elective reduced rates on certain pass-through income above threshold amount. Repeals provision for future adjustment of elective rates.

Applies to tax years beginning on or after January 1, 2021.

Takes effect on 91st day following adjournment sine die.

## A BILL FOR AN ACT

1  
2 Relating to rates of taxation on pass-through income; creating new provisions; amending ORS  
3 316.043; repealing ORS 316.044; and prescribing an effective date.

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

5 **SECTION 1.** ORS 316.043 is amended to read:

6 316.043. (1) As used in this section:

7 (a) "Material participation" has the meaning given that term in section 469 of the Internal Re-  
8 venue Code.

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

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

14 (d) "Qualifying income" means a taxpayer's net income that meets the conditions of subsection  
15 [(6)] (5) of this section, as reported on the taxpayer's return, and that is computed by taking the sum  
16 of the taxpayer's:

17 (A) Nonpassive income after reduction for nonpassive losses; and

18 (B) Business income or loss as a sole proprietor.

19 (2) If a taxpayer that meets the conditions of subsection [(6)] (5) of this section has nonpassive  
20 income attributable to any partnership or S corporation after reduction for nonpassive losses or does  
21 business as a sole proprietorship, that portion of the taxpayer's income that is qualifying income  
22 shall be taxed at:

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

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

25 (A) **A rate of** seven percent of the first [*\$250,000*] **\$100,000** of taxable income, or fraction  
26 thereof; **and**

27 [*(B) Seven and two-tenths percent of taxable income exceeding \$250,000 but not exceeding*  
28 *\$500,000;*]

29 [*(C) Seven and six-tenths percent of taxable income exceeding \$500,000 but not exceeding \$1*  
30 *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 [(D) Eight percent of taxable income exceeding \$1 million but not exceeding \$2.5 million;]

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

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

4 **(B) The rates applicable under ORS 316.037, for taxable income exceeding \$100,000.**

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

7 [(4)] **(3)** A taxpayer shall use the subtractions, deductions or additions otherwise allowed under  
8 this chapter in the calculation of income that is taxed at the rates otherwise applicable under ORS  
9 316.037. The only addition or subtraction allowed in the calculation of qualifying income for which  
10 the taxpayer uses the reduced [rates] **rate** allowed under subsection (2)(b) of this section shall be  
11 any depreciation adjustment directly related to the partnership, S corporation or sole proprietorship.

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

19 [(6)] **(5)** [The rates] **The rate** listed in subsection (2)(b) of this section [apply] **applies** to income  
20 attributable to a partnership, S corporation or sole proprietorship only if:

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

22 (b) The partnership, S corporation or sole proprietorship employs at least one person who is not  
23 an owner, member or limited partner of the partnership or S corporation or who is not the sole  
24 proprietor; and

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

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

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

36 **SECTION 2. ORS 316.044 is repealed.**

37 **SECTION 3. The amendments to ORS 316.043 by section 1 of this 2021 Act and the repeal**  
38 **of ORS 316.044 by section 2 of this 2021 Act apply to tax years beginning on or after January**  
39 **1, 2021.**

40 **SECTION 4. This 2021 Act takes effect on the 91st day after the date on which the 2021**  
41 **regular session of the Eighty-first Legislative Assembly adjourns sine die.**