

SENATE AMENDMENTS TO SENATE BILL 727

By COMMITTEE ON FINANCE AND REVENUE

June 15

1 In line 2 of the printed bill, after “taxation;” insert “creating new provisions; amending ORS
2 316.502;”.

3 Delete lines 4 through 18 and insert:

4 **“SECTION 1. Sections 2 to 6 of this 2021 Act are added to and made a part of ORS
5 chapter 314.**

6 **“SECTION 2. As used in sections 2 to 6 of this 2021 Act:**

7 **“(1) ‘Distributive proceeds’ means the net income, dividends, royalties, interest, rents,
8 guaranteed payments and gains of a pass-through entity, derived from or connected with
9 sources within this state.**

10 **“(2) ‘Member’ means a shareholder of an S corporation, a partner in a general, limited
11 or limited liability partnership or a member of a limited liability company.**

12 **“(3) ‘Partnership’ means a syndicate, group, pool, joint venture or other unincorporated
13 organization, through or by means of which any business, financial operation or venture is
14 carried on in this state.**

15 **“(4) ‘Pass-through entity’ means a partnership or S corporation or a limited liability
16 company electing to be treated as a partnership or S corporation.**

17 **“(5) ‘Share of distributive proceeds’ means the portion of distributive proceeds attribut-
18 able to a member of a pass-through entity in a tax year.**

19 **“SECTION 3. (1) A pass-through entity may elect to be liable for and pay a pass-through
20 business alternative income tax if all members of the pass-through entity are:**

21 **“(a) Individuals subject to the personal income tax imposed under ORS chapter 316; or**

22 **“(b) Entities that are pass-through entities owned entirely by individuals subject to the
23 personal income tax imposed under ORS chapter 316.**

24 **“(2) The election to pay the pass-through business alternative income tax is available if
25 consent is given by all members of the electing pass-through entity who are members at the
26 time the election is filed or is made by any officer, manager or member of the electing
27 pass-through entity who is authorized, under law or the entity’s organizational documents,
28 to make the election and who represents to having such authorization under penalties of
29 perjury. The election shall be made annually on or before the due date, including extensions,
30 of the pass-through entity’s return, in the form and manner prescribed by the Department
31 of Revenue. The election may not be made retroactively. The members of a pass-through
32 entity may revoke an election under this section for a tax year only on or before the due date
33 of the pass-through entity’s return for that tax year, and only if the revocation is agreed to
34 by all members who are members at the time of the revocation.**

35 **“(3) In determining the sum of distributive proceeds and computing the tax under this**

1 section, a pass-through entity shall add back any amount of Oregon tax imposed under ORS
2 chapter 317 or 318 and deducted by the pass-through entity at the entity level for federal
3 income tax purposes under section 164 of the Internal Revenue Code.

4 “(4) Each pass-through entity that makes an election for a tax year pursuant to this
5 section shall annually report to each of its members, for the tax year, the member’s share
6 of distributive proceeds and share of tax paid under this section and eligible for the credit
7 allowed under section 8 of this 2021 Act.

8 “(5) The tax imposed on a pass-through entity pursuant to this section shall be deter-
9 mined with respect to the sum of each member’s share of distributive proceeds attributable
10 to the pass-through entity for the tax year.

11 “(6) The rate of the tax imposed by and computed under this section is:

12 “(a) Nine percent of the first \$250,000, or fraction thereof, of the sum of distributive
13 proceeds; and

14 “(b) Nine and nine-tenths percent of any amount of distributive proceeds in excess of
15 \$250,000.

16 “(7) The amount of pass-through business alternative income tax due from a pass-
17 through entity in a tax year shall be exclusive of any amount of tax due and paid by the
18 pass-through entity under ORS chapter 317 or 318, except as otherwise provided in sections
19 2 to 6 of this 2021 Act.

20 “(8) Pass-through entities that have made an election under this section shall file an
21 entity tax return. The return shall be accompanied by payment and shall be due on the date
22 applicable to returns due under ORS chapter 316, as provided in ORS 314.385.

23 “SECTION 3a. The Department of Revenue may develop and implement a system pro-
24 viding for the filing by electronic means of returns required under section 3 of this 2021 Act.

25 “SECTION 4. Except as otherwise provided in sections 2 to 6 of this 2021 Act or where
26 the context requires otherwise, the provisions of ORS chapters 305 and 314 as to the audit
27 and examination of returns, periods of limitation, determinations of and notices of deficien-
28 cies, assessments, collections, liens, delinquencies, claims for refund and refunds, confer-
29 ences, appeals to the Oregon Tax Court, stays of collection pending appeal, confidentiality
30 of returns and the related penalties, and the related procedures, apply to the determinations
31 of taxes, penalties and interest under sections 2 to 6 of this 2021 Act.

32 “SECTION 5. (1) The Department of Revenue shall administer and enforce sections 2 to
33 6 of this 2021 Act.

34 “(2) The department may adopt or establish rules and procedures that the department
35 considers necessary or appropriate for the implementation, administration and enforcement
36 of sections 2 to 6 of this 2021 Act and that are consistent with sections 2 to 6 of this 2021
37 Act.

38 “SECTION 6. The net revenue from the tax imposed by sections 2 to 6 of this 2021 Act,
39 after deducting refunds, shall be paid over to the State Treasurer and held in the General
40 Fund as miscellaneous receipts available generally to meet any expense or obligation of the
41 State of Oregon lawfully incurred.

42 “SECTION 7. Section 8 of this 2021 Act is added to and made a part of ORS chapter 315.

43 “SECTION 8. (1) If a pass-through entity, as defined in section 2 of this 2021 Act, elects
44 to owe and pay the pass-through business alternative income tax determined under section
45 3 of this 2021 Act, a taxpayer that is a member of the pass-through entity shall be allowed

1 a credit against the taxes that are otherwise due under ORS chapter 316. For each pass-
2 through entity of which the taxpayer is a member, the credit allowed under this section shall
3 equal the member's pro rata share of the tax paid for the tax year under section 3 of this
4 2021 Act.

5 “(2) If the amount allowable as a credit under this section, when added to the sum of the
6 amounts allowable as payment of tax under ORS 316.187 or 316.583, other tax prepayment
7 amounts and other refundable credit amounts, exceeds the taxes imposed by ORS chapters
8 314 and 316 for the tax year after application of any nonrefundable credits allowable for
9 purposes of ORS chapter 316 for the tax year, the amount of the excess shall be refunded to
10 the taxpayer as provided in ORS 316.502.

11 “**SECTION 9.** ORS 316.502 is amended to read:

12 “316.502. (1) The net revenue from the tax imposed by this chapter, after deducting refunds and
13 amounts described in ORS 285B.630 and 285C.635, shall be paid over to the State Treasurer and held
14 in the General Fund as miscellaneous receipts available generally to meet any expense or obligation
15 of the State of Oregon lawfully incurred.

16 “(2) A working balance of unreceipted revenue from the tax imposed by this chapter may be
17 retained for the payment of refunds, but such working balance shall not at the close of any fiscal
18 year exceed the sum of \$1 million.

19 “(3) Moneys are continuously appropriated to the Department of Revenue to make:

20 “(a) The refunds authorized under subsection (2) of this section; and

21 “(b) The refund payments in excess of tax liability authorized under ORS 315.174, 315.262,
22 315.264 and 315.266 and section 17, chapter 906, Oregon Laws 2007, **and section 3 of this 2021**
23 **Act.**

24 “**SECTION 10.** Sections 3 and 8 of this 2021 Act apply to tax years beginning on or after
25 January 1, 2022, and before January 1, 2024.

26 “**SECTION 11.** This 2021 Act takes effect on the 91st day after the date on which the 2021
27 regular session of the Eighty-first Legislative Assembly adjourns sine die.”.