

A-Engrossed Senate Bill 111

Ordered by the Senate June 13
Including Senate Amendments dated June 13

Printed pursuant to Senate Interim Rule 213.28 by order of the President of the Senate in conformance with pre-session filing rules, indicating neither advocacy nor opposition on the part of the President (at the request of Senate Interim Committee on Finance and Revenue)

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. The statement includes a measure digest written in compliance with applicable readability standards.

Digest: The Act extends the sunset for the BAIT and the related tax credit and modifies provisions of the tax and credit. (Flesch Readability Score: 60.6).

[Digest: The Act extends the sunset for the BAIT and the related tax credit. (Flesch Readability Score: 76.5).]

Extends the sunsets for the pass-through business alternative income tax and the related personal income tax credit. **Allows trusts to be members of participating pass-through entities. Allows members of participating entities to opt out of the election to participate. Provides that an overpayment of tax may be applied to a subsequent tax year payment.** Applies to tax years beginning on or after January 1, 2022, and before January 1, 2028.

Takes effect on the 91st day following adjournment sine die.

A BILL FOR AN ACT

Relating to the pass-through business alternative income tax; amending sections 3, 10 and 12, chapter 589, Oregon Laws 2021, and section 16, chapter 82, Oregon Laws 2022; and prescribing an effective date.

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

SECTION 1. Section 3, chapter 589, Oregon Laws 2021, as amended by section 3, chapter 82, Oregon Laws 2022, is amended to read:

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

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

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

(c) Trusts.

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

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 vocation is agreed to by all members who are members at the time of the revocation.

2 (3)(a) In determining the sum of distributive proceeds and computing the tax under this section,
3 a member of a pass-through entity shall add back any amount of Oregon tax imposed under [*this*
4 *chapter*] **ORS chapter 314** and deducted by the pass-through entity at the entity level for federal
5 income tax purposes under section 164 of the Internal Revenue Code.

6 (b) Any amount that is added back under this subsection and that meets the conditions for the
7 use of elective rates under ORS 316.043 may be treated as qualifying income under ORS 316.043, in
8 a proportion determined by the department by rule.

9 (4) Each pass-through entity that makes an election for a tax year pursuant to this section shall
10 annually report to each of its members, for the tax year, the member's share of distributive proceeds
11 and share of tax paid under this section and eligible for the credit allowed under section 8, chapter
12 589, Oregon Laws 2021.

13 (5) The tax imposed on a pass-through entity pursuant to this section shall be determined with
14 respect to the sum of each member's share of distributive proceeds attributable to the pass-through
15 entity for the tax year.

16 **(6) Notwithstanding subsections (1) to (5) of this section, a member of a pass-through**
17 **entity may choose to opt out of the election made by the entity for a tax year. Not later than**
18 **the close of the tax year, a pass-through entity that intends to make the election shall notify**
19 **all members of the pass-through entity of the intention of the entity to pay the tax under**
20 **this section, and each member shall have 60 days from the date of notice to affirmatively opt**
21 **out. If a member opts out under this section:**

22 (a) **The consent of the member is not required under subsection (2) of this section.**

23 (b) **The share of distributive proceeds of that member is not included in the computation**
24 **of the tax under this section.**

25 [(6)] (7) The rate of the tax imposed by and computed under this section is:

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

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

29 [(7)] (8) The amount of pass-through business alternative income tax due from a pass-through
30 entity in a tax year shall be exclusive of any amount of tax due and paid by the pass-through entity
31 under [*this chapter*] **ORS chapter 314**, except as otherwise provided in sections 2 to 6, chapter 589,
32 Oregon Laws 2021.

33 [(8)] (9) Pass-through entities that have made an election under this section shall file an entity
34 tax return. The return shall be accompanied by payment and shall be due on the date applicable to
35 returns due under ORS chapter 316, as provided in ORS 314.385.

36 **(10) If a pass-through entity has made an overpayment of tax under this section, the**
37 **pass-through entity may elect to have that overpayment credited against an installment of**
38 **estimated tax for the subsequent tax year. The department shall administer this subsection**
39 **in a manner consistent with the treatment of overpayment of income tax under ORS 316.583.**

40 **SECTION 1a.** Section 10, chapter 589, Oregon Laws 2021, as amended by section 1, chapter 399,
41 Oregon Laws 2023, is amended to read:

42 **Sec. 10.** (1) Sections 3 and 8, chapter 589, Oregon Laws 2021, apply to tax years beginning on
43 or after January 1, 2022, and before January 1, [2026] **2028**.

44 **(2) The amendments to section 3, chapter 589, Oregon Laws 2021, by section 1 of this 2025**
45 **Act apply to tax years beginning on or after January 1, 2025, and before January 1, 2028, and**

1 **to overpayments made before January 1, 2027.**

2 **SECTION 2.** Section 12, chapter 589, Oregon Laws 2021, as amended by section 2, chapter 399,
3 Oregon Laws 2023, is amended to read:

4 **Sec. 12.** The repeal of sections 3 and 8, chapter 589, Oregon Laws 2021, by section 11, chapter
5 589, Oregon Laws 2021, applies to any tax year that begins on or after January 1, 2022, and before
6 January 1, [2026] **2028**, and to which section 164(b)(6) of the Internal Revenue Code is not applicable.

7 **SECTION 3.** Section 16, chapter 82, Oregon Laws 2022, as amended by section 5, chapter 52,
8 Oregon Laws 2024, is amended to read:

9 **Sec. 16.** (1) The amendments to ORS 284.368 by section 1, chapter 82, Oregon Laws 2022, apply
10 to fiscal years beginning on or after July 1, 2022.

11 (2) The amendments to sections 3 and 5, chapter 589, Oregon Laws 2021, by sections 3 and 4,
12 chapter 82, Oregon Laws 2022, apply to tax years beginning on or after January 1, 2022, [*and before*
13 *January 1, 2026,*] and to estimated payments due on and after June 15, 2022.

14 (3) The amendments to section 2, chapter 527, Oregon Laws 2021, by section 8, chapter 82,
15 Oregon Laws 2022, apply to applications for precertification under section 4, chapter 527, Oregon
16 Laws 2021, and applications for exemption under section 5, chapter 527, Oregon Laws 2021, without
17 precertification, filed on or after June 3, 2022.

18 (4) Section 10, chapter 82, Oregon Laws 2022, applies to tax years beginning on or after January
19 1, 2022, and before January 1, 2026.

20 (5) Sections 13 and 15, chapter 82, Oregon Laws 2022, apply to tax years beginning on or after
21 January 1, 2023, and before January 1, 2029, and to any tax year to which a net operating loss
22 arising in those tax years is carried back.

23 **SECTION 4.** **This 2025 Act takes effect on the 91st day after the date on which the 2025**
24 **regular session of the Eighty-third Legislative Assembly adjourns sine die.**