

CHAPTER 1

AN ACT

HB 4301
[2018 Special Session]

Relating to material participation in a business; creating new provisions; amending ORS 316.043; and prescribing an effective date.

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

SECTION 1. ORS 316.043 is amended to read: 316.043. (1) As used in this section:

(a) "Material participation" has the meaning given that term in section 469 of the Internal Revenue Code.

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

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

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

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

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

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

(a) The rate applicable under ORS 316.037; or

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

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

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

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

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

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

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

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

(4) A taxpayer shall use the subtractions, deductions or additions otherwise allowed under this chapter in the calculation of income that is taxed at the rates otherwise applicable under ORS 316.037.

The only addition or subtraction allowed in the calculation of *[nonpassive]* **qualifying** income for which the taxpayer uses the reduced rates allowed under subsection (2)(b) of this section shall be any depreciation adjustment directly related to the partnership, *[or]* S corporation **or sole proprietorship**.

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

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

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

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

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

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

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

SECTION 2. The amendments to ORS 316.043 by section 1 of this 2018 special session Act apply to tax years beginning on or after January 1, 2018.

SECTION 3. This 2018 special session Act takes effect on the 91st day after the date on which the 2018 special session of the Seventy-ninth Legislative Assembly adjourns sine die.

Approved by the Governor May 22, 2018

Filed in the office of Secretary of State May 22, 2018

Effective date August 20, 2018