

CHAPTER 589

AN ACT

SB 727

Relating to taxation; creating new provisions; amending ORS 316.502; and prescribing an effective date.

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

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

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

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

(2) "Member" means a shareholder of an S corporation, a partner in a general, limited or limited liability partnership or a member of a limited liability company.

(3) "Partnership" means a syndicate, group, pool, joint venture or other unincorporated organization, through or by means of which any business, financial operation or venture is carried on in this state.

(4) "Pass-through entity" means a partnership or S corporation or a limited liability company electing to be treated as a partnership or S corporation.

(5) "Share of distributive proceeds" means the portion of distributive proceeds attributable to a member of a pass-through entity in a tax year.

SECTION 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.

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

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

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

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

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

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

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

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

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

SECTION 3a. The Department of Revenue may develop and implement a system providing for the filing by electronic means of returns required under section 3 of this 2021 Act.

SECTION 4. Except as otherwise provided in sections 2 to 6 of this 2021 Act or where the context requires otherwise, the provisions of ORS chapters 305 and 314 as to the audit and examination of returns, periods of limitation, determinations of and notices of deficiencies, assessments, collections, liens, delinquencies, claims for refund and refunds, conferences, appeals to the Oregon Tax Court, stays of collection pending appeal, confidentiality of returns

and the related penalties, and the related procedures, apply to the determinations of taxes, penalties and interest under sections 2 to 6 of this 2021 Act.

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

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

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

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

SECTION 8. (1) If a pass-through entity, as defined in section 2 of this 2021 Act, elects to owe and pay the pass-through business alternative income tax determined under section 3 of this 2021 Act, a taxpayer that is a member of the pass-through entity shall be allowed a credit against the taxes that are otherwise due under ORS chapter 316. For each pass-through entity of which the taxpayer is a member, the credit allowed under this section shall equal the member's pro rata share of the tax paid for the tax year under section 3 of this 2021 Act.

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

SECTION 9. ORS 316.502 is amended to read:

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

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

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

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

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

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

SECTION 11. Sections 3 and 8 of this 2021 Act are repealed.

SECTION 12. The repeal of sections 3 and 8 of this 2021 Act by section 11 of this 2021 Act applies to any tax year that begins on or after January 1, 2022, and before January 1, 2024, and to which section 164(b)(6) of the Internal Revenue Code is not applicable.

SECTION 13. The repeal of sections 3 and 8 of this 2021 Act by section 11 of this 2021 Act becomes operative on the date on which section 164(b)(6) of the Internal Revenue Code is repealed.

SECTION 14. This 2021 Act takes effect on the 91st day after the date on which the 2021 regular session of the Eighty-first Legislative Assembly adjourns sine die.

Approved by the Governor July 19, 2021

Filed in the office of Secretary of State July 19, 2021

Effective date September 25, 2021