

May 21, 2018, Salem, Oregon

Today the Oregon Legislature convened in Special Session...and adjourned just under 8 hours. The Joint Committee on Sole Proprietors convened **and advanced out the Governor's proposal, HB 4301 as introduced (attached)**. Eight amendments were introduced, none considered in earnest and none advanced. The amendments proposed caps as low as \$250,000 and sought to sunset the preferential tax rates entirely. **The final vote out of Committee was 8 YES to 2 NO**, with Sen. Boquist and Winters voting NO.

The House Floor spent close to 2-hours debating HB 4301, largely focusing on the general fairness of the tax with Democrats arguing the majority of the preferential tax rates should be capped or sunseted and Republicans arguing for more fair application of the rates and lack of emergency for a Special Session at all. **The House passed out HB 4301 with 51 YES votes to 8 NO votes**. All but one of the NO votes were from Democrats: Fahey, Hernandez, Kennemer, Keny-Guyer, Lively, Nosse, Rayfield, Reardon.

Within an hour the bill was fast tracked to the **Senate where they too passed out HB 4301 on a vote of 18 YES to 12 NO**. Republican's provided the majority of the NO votes, joined by Sen. Gelsler-D and Sen. Hass-D. Other NO votes: Baertschiger, Bentz, Boquist, DeBoer, Gelsler, Girod, Hansell, Hass, Heard, Linthicum, Olsen, Thomsen.

The bill now advances to the Governor's desk for signature. The two chambers have officially adjourned.

Interim Day hearings will continue as previously scheduled through Wednesday.

What Legislative Leaders are saying:

Governor Kate Brown-D:

Governor Brown Levels the Playing Field to Spur Growth for Small Businesses

"Today, lawmakers sent the message that Oregon is the place where small businesses have a fair shot to thrive. Small businesses are the backbone of a strong Oregon economy, and will now be able to invest more growing their business and hiring more employees. I'm proud of what we were able to accomplish today, and I will continue working to create a strong, inclusive economy of the future."

Senate Republicans:

"The Governor's proposed legislation doesn't make sense, and is not a real investment in Oregon's small businesses," said Boquist. "Small business is the backbone of Oregon's economy, let's pass true tax reform and give them a fighting chance to create more jobs and grow the economy."

The second amendment, 4301-6, would repeal the section of SB 1528 signed by the Governor following the 2018 Legislative Session that raised taxes on Oregon's small businesses.

"The best way to show our support for small business would be to repeal the \$1.3 billion tax increase created by legislative Democrats and the Governor," said Boquist. "Rather than play political theater, let's pass legislation that truly provides tax relief for Oregon's small businesses."

In the news:

[#http://www.oregonlive.com/politics/index.ssf/2018/05/oregon_lawmakers_move_quickly.html#incart_target2box_default](http://www.oregonlive.com/politics/index.ssf/2018/05/oregon_lawmakers_move_quickly.html#incart_target2box_default)



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House Bill 4301

Sponsored by Representative KOTEK (at the request of Governor Kate Brown)

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**.

Expands availability of elective reduced personal income tax rate for certain pass-through income to taxpayers doing business as sole proprietors.

Applies to tax years beginning on or after January 1, 2018.

Takes effect on 91st day following adjournment sine die.

A BILL FOR AN ACT

1
2 Relating to material participation in a business; creating new provisions; amending ORS 316.043; and
3 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**
15 **subsection (6) of this section, as reported on the taxpayer's return, and that is computed by**
16 **taking the sum 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) of this section has nonpassive in-
20 come 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 [*meets the conditions*
22 *of subsection (6) of this section*] **is qualifying income** 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) Seven percent of the first \$250,000 of taxable income, or fraction thereof;

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

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

30 (D) Eight percent of taxable income exceeding \$1 million but not exceeding \$2.5 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 (E) Nine percent of taxable income exceeding \$2.5 million but not exceeding \$5 million; and

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

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

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

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

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

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

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

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

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

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

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

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

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