

HOUSE AMENDMENTS TO HOUSE BILL 2332

By COMMITTEE ON REVENUE

May 4

1 On page 1 of the printed bill, line 2, after “provisions;” delete the rest of the line and line 3 and
2 insert “and amending ORS 316.045 and 317.063.”

3 Delete lines 5 through 30 and delete pages 2 through 4 and insert:

4 **“SECTION 1. Sections 2 and 4 of this 2005 Act are added to and made a part of ORS**
5 **chapter 316.**

6 **“SECTION 2. (1) In addition to the other modifications to federal taxable income con-**
7 **tained in this chapter, to derive Oregon taxable income there shall be subtracted from fed-**
8 **eral taxable income 50 percent of the net capital gain incurred by the taxpayer during the**
9 **tax year that is included in federal taxable income for Oregon tax purposes.**

10 **“(2) A taxpayer may elect not to claim a subtraction under this section.**

11 **“SECTION 3. Section 2 of this 2005 Act applies to tax years beginning on or after January**
12 **1, 2007.**

13 **“SECTION 4. Notwithstanding section 2 (1) of this 2005 Act, the subtraction allowed un-**
14 **der section 2 of this 2005 Act shall be computed as follows:**

15 **“(1) For tax years beginning on or after January 1, 2007, and before January 1, 2008, six**
16 **percent of the net capital gain incurred by the taxpayer during the tax year that is included**
17 **in federal taxable income for Oregon tax purposes shall be subtracted from federal taxable**
18 **income.**

19 **“(2) For tax years beginning on or after January 1, 2008, and before January 1, 2009, 17**
20 **percent of the net capital gain incurred by the taxpayer during the tax year that is included**
21 **in federal taxable income for Oregon tax purposes shall be subtracted from federal taxable**
22 **income.**

23 **“(3) For tax years beginning on or after January 1, 2009, and before January 1, 2010, 28**
24 **percent of the net capital gain incurred by the taxpayer during the tax year that is included**
25 **in federal taxable income for Oregon tax purposes shall be subtracted from federal taxable**
26 **income.**

27 **“(4) For tax years beginning on or after January 1, 2010, and before January 1, 2011, 39**
28 **percent of the net capital gain incurred by the taxpayer during the tax year that is included**
29 **in federal taxable income for Oregon tax purposes shall be subtracted from federal taxable**
30 **income.**

31 **“SECTION 5. ORS 316.045 is amended to read:**

32 **“316.045. (1) As used in this section:**

33 **“(a) ‘Farming’ means:**

34 **“(A) Raising, harvesting and selling crops;**

35 **“(B) Feeding, breeding, managing or selling livestock, poultry, fur-bearing animals or honeybees**

1 or the produce thereof;

2 “(C) Dairying and selling dairy products;

3 “(D) Stabling or training equines, including but not limited to providing riding lessons, training
4 clinics and schooling shows;

5 “(E) Propagating, cultivating, maintaining or harvesting aquatic species and bird and animal
6 species to the extent allowed by the rules adopted by the State Fish and Wildlife Commission;

7 “(F) On-site constructing and maintaining equipment and facilities used for the activities de-
8 scribed in this subsection;

9 “(G) Preparing, storing or disposing of, by marketing or otherwise, the products or by-products
10 raised for human or animal use on land employed in activities described in this subsection; or

11 “(H) Any other agricultural or horticultural activity or animal husbandry, or any combination
12 of these activities, except that ‘farming’ does not include growing and harvesting trees of a
13 marketable species other than growing and harvesting cultured Christmas trees or certain hardwood
14 timber described in ORS 321.267 (3) or 321.824 (3).

15 “(b) ‘Section 1231 gain’ has the meaning given that term in section 1231 of the Internal Revenue
16 Code.

17 “(2) Notwithstanding ORS 316.037, taxable income that consists of net long-term capital gain
18 shall be subject to tax under this chapter at a rate of five percent if all of the following conditions
19 apply:

20 “(a) The gain is:

21 “(A) Derived from the sale or exchange of capital assets consisting of ownership interests in a
22 corporation, partnership or other entity in which, prior to the sale or exchange, the taxpayer owned
23 at least a 10 percent ownership interest; or

24 “(B) Section 1231 gain.

25 “(b) The property that was sold or exchanged consisted of:

26 “(A) Ownership interests in a corporation, partnership or other entity that is engaged in the
27 trade or business of farming; or

28 “(B) Property that is predominantly used in the trade or business of farming.

29 “(c) The sale or exchange is to a person who is not related to the taxpayer under section 267
30 of the Internal Revenue Code.

31 “(d) The sale or exchange constitutes a substantially complete termination of all of the taxpay-
32 er’s ownership interests in a trade or business that is engaged in farming or a substantially complete
33 termination of all of the taxpayer’s ownership interests in property that is employed in the trade
34 or business of farming. Ownership of a farm dwelling or farm homesite does not constitute ownership
35 of property employed in the trade or business of farming.

36 “(3) If the taxpayer has net long-term capital gain derived in part from the sale or exchange of
37 property described in subsection (2)(b) of this section and in part from the sale or exchange of all
38 other property, the net long-term capital gain that is subject to tax under this section shall be de-
39 termined as follows:

40 “(a) Compute the net long-term capital gain derived from all property described in subsection
41 (2)(b) of this section that was sold or exchanged during the tax year.

42 “(b) Compute the net capital gain or loss from the sale or exchange of all other property during
43 the tax year.

44 “(c) If the amount determined under paragraph (b) of this subsection is a net capital gain, the
45 gain that is subject to tax under subsection (2) of this section shall be the amount determined under

1 paragraph (a) of this subsection.

2 “(d) If the amount determined under paragraph (b) of this subsection is a net capital loss, the
3 gain that is subject to tax under subsection (2) of this section shall be the amount determined under
4 paragraph (a) of this subsection minus the amount determined under paragraph (b) of this subsection.

5 “(4) If a taxpayer claims a subtraction under section 2 of this 2005 Act for the tax year,
6 any net long-term capital gain that would otherwise be subject to tax under this section shall
7 be subject to tax at the rates established under ORS 316.037 for that tax year.

8 “**SECTION 6.** The amendments to ORS 316.045 by section 5 of this 2005 Act apply to tax
9 years beginning on or after January 1, 2007.

10 “**SECTION 7.** Sections 8 and 10 of this 2005 Act are added to and made a part of ORS
11 chapter 317.

12 “**SECTION 8.** (1) In addition to the other modifications to federal taxable income con-
13 tained in this chapter, to derive Oregon taxable income there shall be subtracted from fed-
14 eral taxable income 50 percent of the net capital gain incurred by the corporation during the
15 tax year that is included in federal taxable income for Oregon tax purposes.

16 “(2) A corporation may elect not to claim a subtraction under this section.

17 “**SECTION 9.** Section 8 of this 2005 Act applies to tax years beginning on or after January
18 1, 2008.

19 “**SECTION 10.** Notwithstanding section 8 (1) of this 2005 Act, the subtraction allowed
20 under section 8 of this 2005 Act shall be computed as follows:

21 “(1) For tax years beginning on or after January 1, 2008, and before January 1, 2009, two
22 percent of the net capital gain incurred by the corporation during the tax year that is in-
23 cluded in federal taxable income for Oregon tax purposes shall be subtracted from federal
24 taxable income.

25 “(2) For tax years beginning on or after January 1, 2009, and before January 1, 2010, 17
26 percent of the net capital gain incurred by the corporation during the tax year that is in-
27 cluded in federal taxable income for Oregon tax purposes shall be subtracted from federal
28 taxable income.

29 “**SECTION 11.** ORS 317.063 is amended to read:

30 “317.063. (1) As used in this section:

31 “(a) ‘Farming’ means:

32 “(A) Raising, harvesting and selling crops;

33 “(B) Feeding, breeding, managing or selling livestock, poultry, fur-bearing animals or honeybees
34 or the produce thereof;

35 “(C) Dairying and selling dairy products;

36 “(D) Stabling or training equines, including but not limited to providing riding lessons, training
37 clinics and schooling shows;

38 “(E) Propagating, cultivating, maintaining or harvesting aquatic species and bird and animal
39 species to the extent allowed by the rules adopted by the State Fish and Wildlife Commission;

40 “(F) On-site constructing and maintaining equipment and facilities used for the activities de-
41 scribed in this subsection;

42 “(G) Preparing, storing or disposing of, by marketing or otherwise, the products or by-products
43 raised for human or animal use on land employed in activities described in this subsection; or

44 “(H) Any other agricultural or horticultural activity or animal husbandry, or any combination
45 of these activities, except that ‘farming’ does not include growing and harvesting trees of a

1 marketable species other than growing and harvesting cultured Christmas trees or certain hardwood
2 timber described in ORS 321.267 (3) or 321.824 (3).

3 “(b) ‘Section 1231 gain’ has the meaning given that term in section 1231 of the Internal Revenue
4 Code.

5 “(2) Notwithstanding ORS 317.061, taxable income that consists of net long-term capital gain
6 shall be subject to tax under this chapter at a rate of five percent if all of the following conditions
7 apply:

8 “(a) The gain is:

9 “(A) Derived from the sale or exchange of capital assets consisting of ownership interests in a
10 corporation, partnership or other entity in which, prior to the sale or exchange, the taxpayer owned
11 at least a 10 percent ownership interest; or

12 “(B) Section 1231 gain.

13 “(b) The property that was sold or exchanged consisted of:

14 “(A) Ownership interests in a corporation, partnership or other entity that is engaged in the
15 trade or business of farming; or

16 “(B) Property that is predominantly used in the trade or business of farming.

17 “(c) The sale or exchange is to a person who is not related to the taxpayer under section 267
18 of the Internal Revenue Code.

19 “(d) The sale or exchange constitutes a substantially complete termination of all of the taxpay-
20 er’s ownership interests in a trade or business that is engaged in farming or a substantially complete
21 termination of all of the taxpayer’s ownership interests in property that is employed in the trade
22 or business of farming.

23 “(3) If the taxpayer has net long-term capital gain derived in part from the sale or exchange of
24 property described in subsection (2)(b) of this section and in part from the sale or exchange of all
25 other property, the net long-term capital gain that is subject to tax under this section shall be de-
26 termined as follows:

27 “(a) Compute the net long-term capital gain derived from all property described in subsection
28 (2)(b) of this section that was sold or exchanged during the tax year.

29 “(b) Compute the net capital gain or loss from the sale or exchange of all other property during
30 the tax year.

31 “(c) If the amount determined under paragraph (b) of this subsection is a net capital gain, the
32 gain that is subject to tax under subsection (2) of this section shall be the amount determined under
33 paragraph (a) of this subsection.

34 “(d) If the amount determined under paragraph (b) of this subsection is a net capital loss, the
35 gain that is subject to tax under subsection (2) of this section shall be the amount determined under
36 paragraph (a) of this subsection minus the amount determined under paragraph (b) of this subsection.

37 “(4) **If a taxpayer claims a subtraction under section 8 of this 2005 Act for the tax year,**
38 **any net long-term capital gain that would otherwise be subject to tax under this section shall**
39 **be subject to tax at the rate established under ORS 317.061 for that tax year.**

40 “**SECTION 12. The amendments to ORS 317.063 by section 11 of this 2005 Act apply to tax**
41 **years beginning on or after January 1, 2008.”**