

Minority Report
A-Engrossed
House Bill 2332

Ordered by the House May 4
Including House Minority Report Amendments dated May 4

Sponsored by nonconcurring members of the House Committee on Revenue: Representatives GALIZIO, HASS

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.

[Reduces rate of tax on capital gains of personal income and corporate income and excise taxpayers. Phases in reduction.]

[Applies to tax years beginning on or after January 1, 2006, for personal income taxpayers and January 1, 2008, for corporate income and excise taxpayers.]

Exempts first \$2,000 of net capital gain that is qualified net capital gain from income taxation. Defines "qualified net capital gain."

Applies to tax years beginning on or after January 1, 2005.

Takes effect on 91st day following adjournment sine die.

A BILL FOR AN ACT

1
2 Relating to reductions in capital gains taxes; creating new provisions; amending ORS 316.037,
3 316.045, 316.122, 317.061 and 317.063; and prescribing an effective date.

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

5 **SECTION 1.** ORS 316.037 is amended to read:

6 316.037. (1)(a) A tax is imposed for each taxable year on the entire taxable income of every
7 resident of this state. The amount of the tax shall be determined in accordance with the following
8 table:

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10		
11	If taxable income is:	The tax is:
12		
13	Not over \$2,000	5% of
14		taxable
15		income
16	Over \$2,000 but not	
17	over \$5,000	\$100 plus 7%
18		of the excess
19		over \$2,000
20		
21	Over \$5,000	\$310 plus 9%
22		of the excess
23		over \$5,000

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.

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(b) For tax years beginning in each calendar year, the Department of Revenue shall adopt a table that shall apply in lieu of the table contained in paragraph (a) of this subsection, as follows:

(A) The minimum and maximum dollar amounts for each rate bracket for which a tax is imposed shall be increased by the cost-of-living adjustment for the calendar year.

(B) The rate applicable to any rate bracket as adjusted under subparagraph (A) of this paragraph shall not be changed.

(C) The amounts setting forth the tax, to the extent necessary to reflect the adjustments in the rate brackets, shall be adjusted.

(c) For purposes of paragraph (b) of this subsection, the cost-of-living adjustment for any calendar year is the percentage (if any) by which the monthly averaged U.S. City Average Consumer Price Index for the 12 consecutive months ending August 31 of the prior calendar year exceeds the monthly averaged index for the second quarter of the calendar year 1992.

(d) As used in this subsection, "U.S. City Average Consumer Price Index" means the U.S. City Average Consumer Price Index for All Urban Consumers (All Items) as published by the Bureau of Labor Statistics of the United States Department of Labor.

(e) If any increase determined under paragraph (b) of this subsection is not a multiple of \$50, the increase shall be rounded to the next lower multiple of \$50.

(2)(a) Notwithstanding subsection (1) of this section, the first \$2,000 of net capital gain that is qualified net capital gain under subsection (5) of this section shall be taxed at the rate of zero percent.

(b) A taxpayer may elect not to be taxed at the rate established under paragraph (a) of this subsection.

[2] (3) A tax is imposed for each taxable year upon the entire taxable income of every part-year resident of this state. The amount of the tax shall be computed under [subsection (1)] **subsections (1) and (2)** of this section as if the part-year resident were a full-year resident and shall be multiplied by the ratio provided under ORS 316.117 to determine the tax on income derived from sources within this state.

[3] (4) A tax is imposed for each taxable year on the taxable income of every full-year non-resident that is derived from sources within this state. The amount of the tax shall be determined in accordance with [the table set forth in subsection (1)] **subsections (1) and (2)** of this section.

(5)(a) For purposes of this section, net capital gain is qualified net capital gain if the gain:

(A) Is treated as net capital gain for federal tax purposes for the tax year;

(B) Is includable in taxable income in this state for the tax year;

(C) Was held by the taxpayer for a period of at least five continuous years preceding the date of the sale or other disposition that resulted in the capital gain; and

(D) Is derived from the sale of:

(i) Real or tangible personal property located in this state at the time of sale; or

(ii) Stocks or other ownership interests in an entity primarily located in this state.

(b) The Department of Revenue shall adopt rules for tracing net capital gain to particular assets and for determining the location of assets and entities for purposes of this section.

SECTION 2. ORS 316.122 is amended to read:

316.122. (1) If the federal taxable income of husband and wife (one being a part-year resident and the other a nonresident) is determined on a joint federal return, their taxable income in this state

1 shall be separately determined, unless they elect to file a joint return, in which case their tax on
2 their joint income shall be determined in this state pursuant to ORS 316.037 [(3)] (4).

3 (2) If the federal taxable income of husband and wife (one being a full-year resident and the
4 other a part-year resident) is determined on a joint federal return, their taxable income in this state
5 shall be separately determined, unless they elect to file a joint return, in which case their tax on
6 their joint income shall be determined in this state pursuant to ORS 316.037 [(2)] (3).

7 (3) If the federal taxable income of husband and wife (one being a full-year resident and the
8 other a nonresident) is determined on a joint federal return, their taxable income in the state shall
9 be separately determined, unless they elect to file a joint return, in which case their tax on their
10 joint income shall be determined in this state pursuant to ORS 316.037 [(3)] (4).

11 (4) For purposes of computing the tax of a husband and wife under this section, if one of the
12 spouses is a full-year resident individual, then as used in ORS 316.037 [(2) or] (3) **or** (4), that spouse's
13 taxable income derived from Oregon sources is that spouse's entire federal taxable income, defined
14 in the laws of the United States, with the modifications, additions and subtractions provided in this
15 chapter and other laws of this state applicable to personal income taxation.

16 (5) The provisions of ORS 316.367 with respect to joint returns apply if both husband and wife
17 are part-year residents or full-year nonresidents.

18 **SECTION 3.** ORS 316.045 is amended to read:

19 316.045. (1) As used in this section:

20 (a) "Farming" means:

21 (A) Raising, harvesting and selling crops;

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

24 (C) Dairying and selling dairy products;

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

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

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

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

33 (H) Any other agricultural or horticultural activity or animal husbandry, or any combination
34 of these activities, except that "farming" does not include growing and harvesting trees of a
35 marketable species other than growing and harvesting cultured Christmas trees or certain hardwood
36 timber described in ORS 321.267 (3) or 321.824 (3).

37 (b) "Section 1231 gain" has the meaning given that term in section 1231 of the Internal Revenue
38 Code.

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

41 (a) The gain is:

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

45 (B) Section 1231 gain.

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

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

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

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

7 (d) The sale or exchange constitutes a substantially complete termination of all of the taxpayer's
8 ownership interests in a trade or business that is engaged in farming or a substantially complete
9 termination of all of the taxpayer's ownership interests in property that is employed in the trade
10 or business of farming. Ownership of a farm dwelling or farm homesite does not constitute owner-
11 ship of property employed in the trade or business of farming.

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

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

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

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

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

26 **(4) If any capital gain of a taxpayer is taxed at the rate described in ORS 316.037 (2)(a)**
27 **for the tax year, any net long-term capital gain that would otherwise be subject to tax under**
28 **this section shall be subject to tax at the rates established under ORS 316.037 (1) for that tax**
29 **year.**

30 **SECTION 4. The amendments to ORS 316.037, 316.045 and 316.122 by sections 1 to 3 of this**
31 **2005 Act apply to tax years beginning on or after January 1, 2005.**

32 **SECTION 5. ORS 317.061 is amended to read:**

33 317.061. (1) The rate of the tax imposed by and computed under this chapter is [*six and*
34 *six-tenths*] **6.6** percent.

35 **(2)(a) Notwithstanding subsection (1) of this section, the first \$2,000 of net capital gain**
36 **that is qualified net capital gain under subsection (3) of this section shall be taxed at the rate**
37 **of zero percent.**

38 **(b) A taxpayer may elect not to be taxed at the rate established under paragraph (a) of**
39 **this subsection.**

40 **(3)(a) For purposes of this section, net capital gain is qualified net capital gain if the gain:**

41 **(A) Is treated as net capital gain for federal tax purposes for the tax year;**

42 **(B) Is includable in taxable income in this state for the tax year;**

43 **(C) Was held by the taxpayer for a period of at least five continuous years preceding the**
44 **date of the sale or other disposition that resulted in the capital gain; and**

45 **(D) Is derived from the sale of:**

1 (i) **Real or tangible personal property located in this state at the time of sale; or**

2 (ii) **Stocks or other ownership interests in an entity primarily located in this state.**

3 (b) **The Department of Revenue shall adopt rules for tracing net capital gain to particular**
4 **assets and for determining the location of assets and entities for purposes of this section.**

5 **SECTION 6.** ORS 317.063 is amended to read:

6 317.063. (1) As used in this section:

7 (a) "Farming" means:

8 (A) Raising, harvesting and selling crops;

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

11 (C) Dairying and selling dairy products;

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

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

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

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

20 (H) Any other agricultural or horticultural activity or animal husbandry, or any combination
21 of these activities, except that "farming" does not include growing and harvesting trees of a
22 marketable species other than growing and harvesting cultured Christmas trees or certain hardwood
23 timber described in ORS 321.267 (3) or 321.824 (3).

24 (b) "Section 1231 gain" has the meaning given that term in section 1231 of the Internal Revenue
25 Code.

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

28 (a) The gain is:

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

32 (B) Section 1231 gain.

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

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

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

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

39 (d) The sale or exchange constitutes a substantially complete termination of all of the taxpayer's
40 ownership interests in a trade or business that is engaged in farming or a substantially complete
41 termination of all of the taxpayer's ownership interests in property that is employed in the trade
42 or business of farming.

43 (3) If the taxpayer has net long-term capital gain derived in part from the sale or exchange of
44 property described in subsection (2)(b) of this section and in part from the sale or exchange of all
45 other property, the net long-term capital gain that is subject to tax under this section shall be de-

1 terminated as follows:

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

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

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

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

12 **(4) If any capital gain of a taxpayer is taxed at the rate described in ORS 317.061 (2)(a)**
13 **for the tax year, any net long-term capital gain that would otherwise be subject to tax under**
14 **this section shall be subject to tax at the rates established under ORS 317.061 (1) for that tax**
15 **year.**

16 **SECTION 7. The amendments to ORS 317.061 and 317.063 by sections 5 and 6 of this 2005**
17 **Act apply to tax years beginning on or after January 1, 2005.**

18 **SECTION 8. This 2005 Act takes effect on the 91st day after the date on which the reg-**
19 **ular session of the Seventy-third Legislative Assembly adjourns sine die.**

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