These instructions were updated on April 28, 2020 to reflect the Director's Order 20-01 and 20-02.

OREGON DEPARTMENT OF REVENUE

Schedule OR-PTE-NR Instructions 2019

Qualified business income reduced tax rate for Oregon nonresidents

General information

New Information. Director's Order 20-01 extended the return due date from April 15, 2020 to July 15, 2020. Director's Order 20-02 extended the return due date for fiscal filers whose due date falls on or after April 1 through July 14, 2020 to July 15, 2020.

If you have qualifying income **earned in Oregon** by a sole proprietorship, partnership, or an S corporation, you may elect to use a reduced tax rate for that income. The reduced tax rate can be claimed for qualifying income up to $5 million.

Important: The qualified business income reduced tax rate is an irrevocable election that must be made each year on an original return. You can't amend to revoke or make the election after your original return is filed **unless** you file an amended return on or before the original due date of **July 15, 2020,** or if filing on extension, **October 15, 2020.** See the "Amending" section for more information. The annual election is made by completing Schedule OR-PTE-NR and checking box 46C on the Oregon Form OR-40-N.

Qualifying income may only be modified for depreciation before applying the reduced tax rate. No other additions, subtractions, or deductions are allowed in the calculation of the tax on qualifying income.

Schedule OR-PTE-NR is for Oregon nonresidents only. If you are an Oregon full-year resident, use Schedule OR-PTE-FY. If you are an Oregon part-year resident, use Schedule OR-PTE-PY.

Qualifications

To be eligible for the reduced tax rate:

- You or your spouse must have qualifying income **earned in Oregon** by a sole proprietorship, partnership, or S corporation;
- You or your spouse must have materially participated in the business; and
- The business must have employed at least one qualifying employee in Oregon.

Qualifying income. For your income to qualify for the reduced tax rate, it must be nonpassive income earned in Oregon by a sole proprietorship, partnership, or S corporation. Income from trusts and estates doesn't qualify for the reduced tax rate.

"Nonpassive income" is income other than that from passive activities as defined in Section 469 of the Internal Revenue Code (IRC). This includes, but isn't limited to, nonpassive income reported on federal Schedules C (line 31), E [line 28, column (k)], and F (line 34); IRC Section 1231 gains treated as ordinary income; guaranteed payments; and royalties. Nonpassive income **doesn't** include wages, interest, dividends, or capital gains for the purpose of the reduced tax rate.

Tiered entities. If you received nonpassive income that passed-through an upper-tier entity to you from a qualifying lower-tier entity, that income qualifies for the reduced tax rate if the lower-tier entity meets the employee requirement.

Example 1: Bryant and Marcus are each the sole shareholders of an S corporation. The S corporations are each 50 percent owners in a partnership. Bryant and Marcus both materially participate in the partnership and the partnership employs ten full-time employees in Oregon. Bryant and Marcus receive a distributive share of nonpassive income from the partnership that passes through their respective S corporations and also receive a salary for the work performed through the S corporations. The distributive share of nonpassive income they receive from the partnership qualifies for the reduced tax rate since the partnership also meets the employee requirement. However, the salary received from the partnership doesn't qualify for the reduced tax rate.

Material participation. Material participation has the same meaning as defined for federal purposes under IRC Section 469. A taxpayer materially participates in an activity if he or she works on a regular, continuous and substantial basis in operations, and must meet any one of the seven material participation tests in Treasury Regulation Section 1.469-5T(a).

Grouping activities. You may group trade, business, or rental activities into a single activity if they form an appropriate economic unit for the purpose of meeting the material participation test under Treasury Regulation Section 1.469-4(c). This treatment is also allowed for the purposes the qualified business income reduced tax rate and the material participation requirement.

Employee requirement. The sole proprietorship, partnership, or S corporation must have employed at least one employee who wasn't an owner, member, or limited partner for an aggregate of at least 1,200 hours during the tax year **in Oregon.** Only the hours worked in a week in which the employee worked at least 30 hours in Oregon can be counted. Hours worked by an employee that is a spouse or other family member that isn't an owner, member, or limited partner can be used to meet the hour requirements. Independent contractors can't be used for the employee requirement.

Example 2: A sole proprietorship had one employee that worked a total of 1,440 hours during the year in Oregon. The employee worked 32 hours per week for 30 weeks and worked 24 hours per week for 20 weeks. The total qualifying hours is 960 (32 hours x 30 weeks) since you can't count hours worked less than 30 hours in a week. Because the total qualifying hours worked in Oregon is less than 1,200, the nonpassive income from the sole proprietorship doesn't qualify for the reduced tax rate.

Example 3: A partnership employed six employees during the year in Oregon. One employee worked 32 hours a week for 30 weeks and the other five employees each worked 20 hours per week for 40 weeks in a job share position. Only the hours worked by the employee that worked 32 hours per week can be used toward the 1,200 hour requirement. Since the total hours (30 weeks x 32 hours per week = 960 total hours) worked by that employee don't exceed the 1,200 hour requirement, the nonpassive income from the partnership doesn't qualify for the reduced tax rate.

Example 4: An S corporation employed three employees during the year in Oregon. One employee worked 32 hours a week for 20 weeks and the other two employees each worked 40 hours per week during the same 20 weeks. The hours for each employee qualify since each employee worked at least 30 hours a week. Therefore, the total qualifying hours in this example is 2,240 hours.

Temporary or "leased" employees. If a qualifying business contracts with a professional employer organization to employ temporary or "leased" employees, those employees can be used to qualify a business for the reduced tax rate if the employees meet the hour requirements.

Amending

You can't amend to revoke or make the election after your original return is filed **unless** the amended return is filed on or before the original due date of **July 15, 2020** or if filing on extension, **October 15, 2020.**

Example 5: Liam filed his original return on March 3, 2020, and didn't elect the reduced tax rate. He files an amended return on April 13, 2020, and makes the election. His amended return will be accepted allowing the reduced tax rate because it was filed before the original due date.

Example 6: Maggie filed her original return on March 12, 2020, and didn't elect the reduced tax rate or file an extension. She files an amended return on August 4, 2020, and elects the reduced tax rate. The reduced tax rate will be denied since the amended return was filed after the original due date of July15, 2020, and she did file an extension.

Example 7: Sam filed his original return on a timely filed extension on September 12, 2020, and elects the reduced tax rate. The reduced tax rate election will be allowed because it was made on his original return.

Example 8: Allen filed his original return on a timely filed extension on August 1, 2020, and didn't elect the reduced tax rate. He files an amended return on October 1, 2020 and makes the election. His amended return will be accepted allowing the reduced tax rate and his amended return will be treated as the original return for the reduced tax rate election.

If you claimed the reduced tax rate on your original return, you must amend Schedule OR-PTE-NR if:

- An IRS audit (or other state audit) resulted in a change that affects your Oregon return;
- You amended your federal (or other state) return and the changes you made affect your Oregon return;
- You have a net operating loss (NOL); or
- You need to correct income or deductions you originally reported.

Note: If you amend after the due date for the return of July 15, 2020 (or October 15, 2020, if filing on extension), you must use the tax on line 12a of the Tax worksheet even if line 13a is less.

Schedule instructions

Use the following instructions to complete Schedule OR-PTE-NR. Complete the entire schedule and include it with your Oregon Form OR-40-N.

Section A instructions

Complete a line for each qualifying sole proprietorship, partnership, or S corporation. Only list businesses that qualify. Use additional schedules if necessary and put the total from all schedules on line 6 of the first page.

Note: You must list **all** nonpassive income (or loss) from qualifying sole proprietorships, partnerships, and S corporations for each individual making the election. **You can't selectively choose which qualifying income (or losses) to report.**

For each qualifying business, enter the business name, federal employer identification number (FEIN), number of qualifying employees, business code number, and entity type.

Business code number. Enter the business code number (or North American Industry Classification System code) as reported on line c of federal Form 1065, line b of federal Form 1120S, or line b of federal Schedules C, C-EZ, or F.

Entity type. Enter the appropriate code for how the business files for tax purposes: **SP** for a sole proprietorship, **SC** for an S corporation, or **P** for a partnership. **Don't** enter LLC or anything other than the codes listed.

Column (a): Enter Oregon-source nonpassive losses attributable to the qualifying sole proprietorship, partnership, or S corporation. Include qualifying nonpassive losses such as IRC Section 1231 losses treated as ordinary losses.

Column (b): For partnerships and S corporations only. Enter Oregon-source Section 179 expense deduction you reported in Part II, Section 28, column (i) of your federal Schedule E attributable to the qualifying partnership or S corporation. **Don't** complete this column for sole proprietorships.

Column (c): Enter Oregon-source nonpassive income attributable to the qualifying sole proprietorship, partnership, or S corporation. Include qualifying nonpassive income such as royalties and IRC Section 1231 gains treated as ordinary income. **Don't** include passive income, capital gains, interest income, wages, or dividends.

Line 6: Report the totals for columns (a), (b), and (c). If more than one page is used, report the total of all pages on the first page.

Line 9: If line 9 is -0- or less, you can't use the reduced tax rate. Return to line 46 and complete the rest of Form OR-40-N. If line 9 is more than -0-, enter the amount on line 2b of Section B, the Tax worksheet.

Section B instructions

The Tax worksheet in Section B will help you calculate which tax rate is more beneficial to you. Complete each line to determine your tax.

Lines 4 and 7: Report only the depreciation modification attributable to the qualifying sole proprietorships, partnerships, or S corporation listed in Section A.

Example 9: Liam reports an addition for depreciation attributable to a qualifying sole proprietorship he owns on line 30S of his Form OR-40-N. He also reports a subtraction for depreciation attributable to a qualifying partnership on line 33S of his Form OR-40-N. Liam will report the addition on line 4 of the Tax worksheet and the subtraction on line 7.

Line 10a: Use **Tax rate chart A** below for the taxable income reported on 8a. Report the tax on line 10a. **Note:** If you have other income that qualifies for an alternative tax rate, such as a farm liquidation long-term capital gains or farm income averaging, you'll need to use the appropriate worksheet or schedule, 2019 Worksheet OR-FCG or 2019 Schedule OR-FCG, to calculate the tax on line 10a. **Don't** include the nonpassive income listed on line 8a in the calculation.

Line 11b: Use **Tax rate chart B** below for the taxable income reported on line 9b and report the tax on line 11b.

Line 13a: Use **Tax rate chart A** below for the taxable income reported on line 1a. Report the tax on line 13a. **Note:** If you have other income that qualifies for an alternative tax rate, such as a farm liquidation long-term capital gains or farm income averaging, you'll need to use the appropriate worksheet or schedule, 2019 Worksheet OR-FCG or 2019 Schedule OR-FCG, to calculate the tax on line 1a.

Line 14a: Enter the lesser of line 12a or 13a. If line 12a is less than 13a, enter the amount on line 14a on line 46 of Form OR-40-N and check box 46c. If line 13a is less than 12a, it isn't more beneficial for you to use the reduced tax rate. Enter the amount from line 13a on line 46 of Form OR-40-N and complete the rest of the return.

Do you have questions or need help?

www.oregon.gov/dor
503-378-4988 or 800-356-4222
questions.dor@oregon.gov

Contact us for ADA accommodations or assistance in other languages.

2019 Tax rate chart A

2019 tax rate chart—Use this chart only for income reported on lines 1a and 8a of Section B, the Tax worksheet. Report the tax on lines 10a and 13a of the worksheet.

Chart S: For persons filing single or married filing separately:

If your taxable income isn't over $3,550	your tax is 5% of taxable income
If your taxable income is over $3,550 but not over $8,900	your tax is $178 plus 7% of excess over $3,550
If your taxable income is over $8,900 but not over $125,000	your tax is $552 plus 9% of excess over $8,900
If your taxable income is over $125,000	your tax is $11,001 plus 9.9% of excess over $125,000

Chart J: For persons filing jointly, head of household, or qualifying widow(er) with dependent child:

If your taxable income isn't over $7,100	your tax is 5% of taxable income
If your taxable income is over $7,100 but not over $17,800	your tax is $355 plus 7% of excess over $7,100
If your taxable income is over $17,800 but not over $250,000	your tax is $1,104 plus 9% of excess over $17,800
If your taxable income is over $250,000	your tax is $22,002 plus 9.9% of excess over $250,000

2019 Tax rate chart B

2019 pass-through entity reduced tax rate chart—Use this chart only for qualifying income reported on line 9b of Section B, the Tax worksheet. Report the tax on line 11b of the worksheet.

If your taxable income isn't over $250,000	your tax is 7% of qualifying income
If your taxable income is over $250,000 but not over $500,000	your tax is $17,500 plus 7.2% of excess over $250,000
If your taxable income is over $500,000 but not over $1 million	your tax is $35,500 plus 7.6% of excess over $500,000
If your taxable income is over $1 million but not over $2.5 million	your tax is $73,500 plus 8% of excess over $1 million
If your taxable income is over $2.5 million but not over $5 million	your tax is $193,500 plus 9% of excess over $2.5 million
If your taxable income is over $5 million	your tax is $418,500 plus 9.9% of excess over $5 million