

## Senate Bill 179

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### 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**.

Authorizes insurers with both in-state and out-of-state business activity to petition Department of Revenue for modification of apportionment formula used to apportion income between Oregon and out-of-state sources, if existing formula does not produce fair and equitable apportionment. Authorizes department to permit or require modification of apportionment formula in order to produce fair and equitable apportionment.

Applies to tax years beginning on or after January 1, 2007, and to tax years for which returns are subject to audit or adjustment by department.

Takes effect on 91st day following adjournment sine die.

### A BILL FOR AN ACT

Relating to insurance company income apportionment; creating new provisions; amending ORS 317.660; and prescribing an effective date.

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

**SECTION 1.** ORS 317.660 is amended to read:

317.660. (1) *[In lieu of the provisions of ORS 314.280,]* If the income of an insurer is derived from business done both within and without this state, the determination of Oregon taxable income shall be arrived at by apportionment based upon an averaging, **as described in subsection (2) of this section**, of the following three factors:

(a) *[(1) Insurance sales factor: The percentage obtained by dividing (a)]* **An insurance sales factor, the numerator of which is** the direct premiums (excluding reinsurance accepted and without deduction of reinsurance ceded) received by the insurer during the *[taxable]* **tax** year on policies and contracts *[which]* **that** are allocated to this state and to other jurisdictions in which the insurer is not authorized to do business *[by (b)],* **and the denominator of which is** the total of such premiums received by the insurer during the *[taxable]* **tax** year on policies and contracts that had been sold within and without this state. For purposes of this *[subsection]* **paragraph**, "premiums" means sums properly included in *[appropriate]* **those** schedules of the annual statement filed by the insurer with the Director of the Department of Consumer and Business Services, *[which]* **that appropriately** allocate premiums by jurisdiction. *[If the exclusion of reinsurance premiums results in an apportionment formula that does not fairly represent the extent of the taxpayer's activity in this state, the taxpayer may petition for and the Department of Revenue may permit, or the Department of Revenue may require, the inclusion of reinsurance premiums in the insurance sales factor.]*

(b) *[(2) Wage and commission factor: The percentage obtained by dividing (a)]* **A wage and commission factor, the numerator of which is** the total of wages, salaries, commissions and other compensation for personal services paid in this state during the tax period to employees and insurance *[salesmen]* **producers** in connection with the business of the insurer, *[by (b)]* **and the denom-**

**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.

inator of which is the total wages, salaries, commissions and other compensation for personal services paid everywhere during the tax period to employees and insurance [salesmen] producers in connection with the business of the insurer. For [determining the place of payment] purposes of this paragraph, the procedure set forth in ORS 314.660 (2) shall [apply] be used to determine the place of payment.

(c) [(3) *Real estate income and interest factor: The percentage obtained by dividing (a)*] **A real estate income and interest factor, the numerator of which is** the total net income [(after deducting from gross rental income real estate expenses, property taxes and depreciation attributable thereto, which are included in appropriate schedules of the annual statement filed by the insurer with the Department of Consumer and Business Services)] received from real property within this state plus gross interest received on loans secured by real property within this state during the [taxable year, by (b)] **tax year, and the denominator of which is** the total net income received from real property within and without this state plus gross interest received on loans secured by real property within and without this state during the [taxable] **tax year. For purposes of this paragraph:**

(A) **“Total net income received from real property” means gross rental income from real property reduced by all of the following items attributable to the property, as reported by the insurer in the annual statement filed with the Department of Consumer and Business Services:**

- (i) Rental real estate expenses;
- (ii) Rental real estate property taxes; and
- (iii) Rental real estate depreciation.

(B) Any imputed rent from property owned and occupied by the company shall be excluded from total net income received from real property.

(C) If the denominator of the factor is less than zero, the factor shall be zero.

(D) Unless subparagraph (C) of this paragraph applies, if the numerator is greater than the denominator, the factor shall be one.

(2) The factors described in subsection (1) of this section, expressed as percentages, shall be averaged by adding the factors together and dividing the sum by three. The number of factors to be averaged shall be reduced by the number of factors that are not present in the taxpayer’s business both within and without the state.

(3) If application of the apportionment formula described in subsections (1) and (2) of this section, including but not limited to the exclusion of reinsurance premiums from the insurance sales factor under subsection (1)(a) of this section, results in an apportionment that does not fairly and equitably represent the taxpayer’s insurance business activity in this state, the taxpayer may petition the Department of Revenue for and the department may permit, or the department may require, to achieve an apportionment that fairly and equitably represents the taxpayer’s insurance business activity:

- (a) The exclusion of any one or more factors;
- (b) The inclusion of one or more additional factors that will fairly and equitably represent the taxpayer’s business activity in this state;
- (c) The inclusion of reinsurance premiums in the insurance sales factor; or
- (d) The employment of any other method to achieve a fair and equitable apportionment of the taxpayer’s income.

**SECTION 2.** The amendments to ORS 317.660 by section 1 of this 2007 Act apply to:

- (1) Tax years beginning on or after January 1, 2007; and

1       **(2) Any tax year for which a return is subject to audit or adjustment by the Department**  
2       **of Revenue on or after the effective date of this 2007 Act.**

3       **SECTION 3.** **This 2007 Act takes effect on the 91st day after the date on which the reg-**  
4       **ular session of the Seventy-fourth Legislative Assembly adjourns sine die.**

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