

Enrolled Senate Bill 179

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CHAPTER

AN ACT

Relating to insurance company income apportionment; creating new provisions; amending ORS 317.122 and 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 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 denominator 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 de-*

ducting 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) If application of the apportionment formula described in subsection (1) 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. ORS 317.122 is amended to read:

317.122. (1) A credit against taxes imposed by this chapter shall be allowed insurers for the gross premium tax paid on fire insurance premiums in accordance with ORS 731.820.

(2) A credit against the taxes otherwise due under this chapter shall be allowed to an insurer. The amount of the credit shall be the lesser of:

(a) The amount of any assessments paid by the insurer during the tax year pursuant to ORS 656.612; or

(b) The total profit attributable to the workers' compensation line of business, net of reinsurance and including all investment gain attributable to the workers' compensation line of business, determined in the manner prescribed under ORS 731.574 by the Director of the Department of Consumer and Business Services, with the modifications under ORS 317.655 attributable to the workers' compensation line of business, and then apportioned in accordance with ORS 317.660 and multiplied by the corporate tax rate set forth in ORS 317.061. In making the apportionment under ORS 317.660 for purposes of this paragraph, the [factors] **insurance sales factor** shall be determined using only items attributable to the workers' compensation line of business.

SECTION 3. ORS 317.660, as amended by section 1 of this 2007 Act, is amended to read:

317.660. (1)(a) 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 of the following three factors:] **multiplying the insurer's net income by the insurance sales factor.**

[(a)] **(b)** *[An insurance sales factor,]* **The insurance sales factor shall consist of a fraction,** the numerator of which is the **amount of** direct premiums (excluding reinsurance accepted and without deduction of reinsurance ceded) received **or earned** by the insurer during the tax year on policies and contracts that are allocated to this state and to other jurisdictions in which the insurer is not authorized to do business, and the denominator of which is the total of such premiums received **or earned** by the insurer during the tax year on policies and contracts that had been sold within and without this state.

(2) For purposes of this *[paragraph,]* **section:**

(a) “Net income” means net income properly recorded in the statement of income reported in the annual statement filed by the insurer with the Director of the Department of Consumer and Business Services.

(b) “Premiums” means sums properly included in those schedules of the annual statement filed by the insurer with the Director of the Department of Consumer and Business Services that appropriately allocate premiums by jurisdiction. If the exclusion of reinsurance premiums results in an insurance sales factor 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. If the annual statement of the insurer does not report received premiums then the insurance sales factor shall be determined based on earned premiums.

(3) If application of the apportionment formula described in subsection (1) 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)(A) The exclusion of the insurance sales factor; and

(B) The inclusion of one or more additional factors that will fairly and equitably represent the taxpayer’s business activity in this state;

(b) The inclusion of the insurance sales factor and one or more additional factors that will fairly and equitably represent the taxpayer’s business activity in this state; or

(c) The employment of any other method to achieve a fair and equitable apportionment of the taxpayer’s income.

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

[(c) A real estate income and interest factor, the numerator of which is the total net income received from real property within this state plus gross interest received on loans secured by real property within this state during the 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 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) If application of the apportionment formula described in subsection (1) 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 4. The amendments to ORS 317.660 by section 1 of this 2007 Act apply to tax years beginning before January 1, 2007.

SECTION 5. The amendments to ORS 317.122 and 317.660 by sections 2 and 3 of this 2007 Act apply to tax years beginning on or after January 1, 2007.

SECTION 6. This 2007 Act takes effect on the 91st day after the date on which the regular session of the Seventy-fourth Legislative Assembly adjourns sine die.

Passed by Senate June 7, 2007

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Secretary of Senate

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President of Senate

Passed by House June 15, 2007

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Speaker of House

Received by Governor:

.....M.,....., 2007

Approved:

.....M.,....., 2007

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Governor

Filed in Office of Secretary of State:

.....M.,....., 2007

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Secretary of State