

House Revenue Committee

February 6, 2017

HB 2273 – Alternative Apportionment

Summary

HB 2273 adopts a model proposal developed by the Multistate Tax Commission (MTC) relating to the alternative apportionment provisions. Oregon is a member of the MTC and codified the Uniform Division of Income for Tax Purposes Act (UDITPA) provisions in ORS chapter 314. The alternative apportionment provisions are codified in ORS 314.667.

UDITPA is a model law for apportioning the income of a corporation that is taxable in two or more states. Historically, income was apportioned using an equal-weighted three-factor formula that included a sales factor, a property factor and a payroll factor. Oregon shifted from the equal-weighted three-factor formula to a heavier weighted sales factor in 1991 and has required the use of a single sales factor for most corporations since 2005.

ORS 314.667 allows a taxpayer to petition for (or the department to require) an alternative apportionment method if the application of the statutory allocation and apportionment provisions do not fairly represent the taxpayer's business activity in this state.

The MTC amended the UDITPA alternative apportionment provisions in July of 2015. HB 2273 adopts the alternative apportionment amendments in part.

Comments

The MTC amendments initially consisted of only two provisions. HB 2273 adopts those two provisions in SECTION 1, paragraph (2)(a) and (2)(b). The MTC amendment reflected in (2)(a) clarifies the tax administrator's authority to require industry-wide and issue-wide special apportionment provisions by regulation; the amendment reflected in (2)(b) preserves authority for ad hoc relief in individual cases where the standard statutory formula or alternative apportionment regulations do not fairly reflect the taxpayer's activity in the state.

Based on recommendations from the MTC hearing officer report, the MTC adopted three additional amendments to the alternative apportionment provisions. HB 2273 adopts one of those additional three proposals.

1) Relating to the burden of proof – the MTC proposal clarifies that the party proposing the alternative method has the burden of proof to show that the standard UDITPA provisions do not fairly represent the taxpayer's activity in Oregon and that the alternative method is reasonable. This has long been the law in Oregon, as established by Oregon Supreme Court precedent. HB 2273 does not include this MTC amendment because the principle already is established under Oregon law.

Legislative Testimony

2) Relating to imposition of civil or criminal penalties – if the department requires any method to effectuate an equitable allocation and apportionment of the taxpayer’s income, the department cannot impose any civil or criminal penalty with reference to the tax due that is attributable to the taxpayer’s reasonable reliance solely on the UDITPA allocation and apportionment provisions. HB 2273 does not adopt this MTC amendment.

3) Relating to revocation of written permission – a taxpayer that has received written permission from the department to use a reasonable method to effectuate an equitable allocation and apportionment of the taxpayer’s income shall not have that permission revoked with respect to transactions and activities that have already occurred unless there has been a material change in, or a material misrepresentation of, the facts provided by the taxpayer upon which the department reasonably relied. HB 2273 adopts this amendment in SECTION 1, paragraph (3).

For more information about this testimony, contact Jeff Henderson 503-947-2124.