

Income/Franchise:

Oregon Tax Court Addresses Inclusion of Commodities Hedging Receipts in Company's Sales Factor

Case No. TC-MD 190031N, Or. Tax Ct. (4/14/21). In an unpublished order of the Magistrate Division of the Oregon Tax Court, the presiding magistrate denied the taxpayer's motion for summary judgment and granted partial summary judgment to the Oregon Department of Revenue in a matter involving whether to include the taxpayer's commodities hedging receipts in its sales factor for Oregon corporate excise (income) tax purposes. The presiding magistrate held that commodities hedging receipts arose from sales of intangible assets within the meaning of Or. Rev. Stat. section 314.665(6)(a). Therefore, the presiding magistrate reasoned that such gross receipts must be excluded from the taxpayer's sales factor unless they derive from the taxpayer's "primary business activity," which is a question of fact that has yet to be determined in this case. The presiding magistrate noted that the taxpayer "has presented evidence of the integral role that hedging plays in its business and requested the opportunity to present additional evidence on the question of its primary business activity." Given the "fact-dependent nature of the inquiry," the presiding magistrate concluded that summary judgment for the taxpayer is not appropriate at this time. Please contact us with any questions.

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