

Miscellaneous:

Oregon Tax Court Case on Tobacco Products Tax Looks at Commerce Clause Nexus and Caselaw

Case No. TC 5272, Or. Tax Ct. (8/6/21). In a case involving an out-of-state company that sold tobacco and non-tobacco products to Oregon customers and had obtained an Oregon distributor license, as well as registered with the Oregon Secretary of State as a foreign corporation, and whether it had substantial nexus with Oregon for state tobacco products tax (TPT) purposes, the Oregon Tax Court, Regular Division (Court), granted partial motions for summary judgment filed by the Oregon Department of Revenue and the taxpayer and concluded in an unpublished decision that, under the presented facts:

URL: <https://cdm17027.contentdm.oclc.org/digital/collection/p17027coll6/id/8390/rec/1>

- The company's activities of selling tobacco products to Oregon customers had a substantial nexus with Oregon during the TPT periods at issue, and the measure of the TPT is fairly related to its activity in Oregon;
- Imposing the TPT on the company does not unduly burden interstate commerce and therefore such imposition does not violate the Commerce Clause; and
- Certain charges at issue may be excluded from the TPT's "wholesale sales price" to the extent that they are consideration for something other than tobacco products and to the extent the amounts are accurately allocated.

The tax periods at issue in the case involved sixteen quarters ending December 31, 2008, and June 30, 2009 through December 31, 2012, and among the facts was that during each of the calendar years 2008 and 2009, the company had approximately \$10,000 in gross sales and fewer than 20 invoiced transactions. In reaching its conclusions, the Court referenced and discussed at length a multitude of important nexus cases from around the country, including seminal decisions like *Quill*, *Complete Auto*, and *Geoffrey*, and ultimately concluded that the company's in-state activities satisfied all requirements for "substantial nexus" with Oregon under *Wayfair* for TPT purposes.

See forthcoming Multistate Tax Alert for more details on this decision, and please contact us with any questions in the meantime.

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