

## Income/Franchise:

### Oregon Tax Court Reconsiders Case on Inclusion of Dividend and Subpart F Income in Sales Factor

*Case No. TC 5340 (Order on Reconsideration), Or. Tax Ct. (10/6/21); Case No. TC 5340 (Order Granting Reconsideration), Or. Tax Ct. (10/6/21).* In a case involving dividend income and “subpart F income” received by a taxpayer from its controlled foreign corporations (CFCs) and whether Oregon statutes require portions of such income that are not subtracted from federal taxable income to be included in (or excluded from) the sales factor of the taxpayer’s Oregon corporate excise (income) tax apportionment formula, the Oregon Tax Court, Regular Division (Court), granted motions for reconsideration of its earlier ruling from 2020 [see Case No. TC 5340, Or. Tax Ct. (12/16/20) for details on this earlier ruling] – now concluding that:

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**URL:** <https://cdm17027.contentdm.oclc.org/digital/collection/p17027coll6/id/8448/rec/1>

**URL:** <https://cdm17027.contentdm.oclc.org/digital/collection/p17027coll6/id/8342/rec/5>

1. The subpart F income amounts constitute “gross receipts” for apportionment purposes similar to the dividend income; and
2. The dividend income and subpart F income amounts generally must be excluded from “sales” arising from the holding of the CFC stock; however, they may be “reincluded” if derived from an activity that constitutes the primary business activity of the payor CFC and the primary business activity of the taxpayer.

Under the facts, the taxpayer had filed an Oregon consolidated corporate excise (income) tax return and had sought to include the un-subtracted 20% of the subpart F income and 20% of the dividends received from CFCs in its Oregon sales factor.

See forthcoming Multistate Tax Alert for more details on this recent opinion, including related taxpayer considerations, and please contact us with any questions in the meantime.

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