

## Other/Miscellaneous:

### Oregon Supreme Court Affirms E911 Tax Imposition Does Not Violate Due Process or Commerce Clauses

*Case No. SC S067581*, Or. (12/23/21). The Oregon Supreme Court (Court) affirmed the Oregon Tax Court's ruling from 2020 [see T.C. 5331, Or. Tax Ct. (3/2/20) for more details on this 2020 ruling], which cited a breadth US Supreme Court case law including *Wayfair*, *Kaestner*, and *Complete Auto* and held that Oregon validly may impose its "E911 Tax" on an out-of-state telecommunications company that provides Voice over Internet Protocol (VoIP) services to customers across the United States, including to residents of Oregon. According to the Court, such an imposition on a company that lacks an in-state physical presence, but which has access to Oregon's emergency communications system (*i.e.*, the statewide "911" system) does *not* violate the US Constitution's Due Process or Commerce Clauses. The Court reasoned that for Due Process Clause purposes the facts demonstrate that the taxpayer's contacts with Oregon were not random, isolated, or fortuitous but were, instead, the result of its intentional efforts to serve the Oregon market. As a result of those efforts, the Court explained that the taxpayer established thousands of VoIP lines for Oregon customers and entered into ongoing commercial relationships with those customers requiring it to provide services to those customers in Oregon.

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Regarding the Commerce Clause, the Court reasoned that "a company that earned far greater revenue and engaged in far more transactions than involved in *Wayfair* must be deemed to have also availed itself of the substantial privilege of carrying on business in Oregon." Acknowledging that the taxpayers in *Wayfair* undoubtedly had an extensive virtual presence, the Court explained that the US Supreme Court in *Wayfair* did not articulate that fact as a requirement, and the taxpayer "offers no explanation as to why it would make sense to impose such a requirement when a nexus is otherwise established through sales, marketing, and service delivery efforts."

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

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