

Income/Franchise:

Oregon Tax Court Addresses Sales Factor Costs of Performance Calculation under Prior Law

Case No. TC-MD 200019G, Or. Tax Ct. (3/28/22). In an unpublished order of the Magistrate Division of the Oregon Tax Court, the presiding magistrate granted partial summary judgment for the Oregon Department of Revenue in a matter involving whether payment processing services performed by out-of-state third parties under contract with an Oregon taxpayer were performed “on behalf of” the taxpayer under prior state law (*i.e.*, Or. Rev. Stat. section 314.665(4) (2009) and former OAR 150-314.665(4)(2) (Aug 31, 2008)) for purposes of determining where the taxpayer incurred its direct costs of performing income-producing activity to compute its sales factor for Oregon corporate excise (income) tax purposes for the 2010 and 2011 tax years at issue. The presiding magistrate concluded that, under the facts, the out-of-state third-party payment acquirers did *not* act “on behalf of” the taxpayer under these contracts but merely performed services for the taxpayer. In doing so, the presiding magistrate explained that the declarations and exhibits on file show that the payment processing contracts with the taxpayer did not change the nature of the third parties’ services and thus they did not act on the taxpayer’s behalf for purposes of OAR 150-314.664(4)(2) (Aug 31, 2008). Accordingly, the taxpayer was deemed to incur the underlying processing costs in Oregon rather than outside, and therefore, could not exclude the receipts at issue from the numerator of its sales factor. Please contact us with any questions.

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