

Income/Franchise:

Oregon: Airline Must Include Unitary Affiliate's Departures for Special Industry Apportionment

TC Case Nos. 5406 and 5407, Or. Tax Ct. (7/21/22). In an unpublished order of the Regular Division of the Oregon Tax Court (Court) involving the special income tax apportionment formula for airlines under Or. Rev. Stat. section 314.280 and Or. Admin. Rule 150-314.280-(I) as in effect for the calendar and tax years 2012, 2013 and 2014 at issue, the Oregon Tax Court held that a national airline company must include the flight data of its unitary affiliate (a regional airline) in the "departure ratio" used to determine its Oregon transportation sales for purposes of its Oregon consolidated corporate excise tax return (both corporations are included in the same Oregon consolidated return). In doing so, the Court explained that when Oregon's airline rule states that the "total sales of the taxpayer" in Oregon is the "total transportation revenue" times "departures of aircraft in this state * * * compared to total departure[s]," plus "nonflight sales directly attributable to this state," each term, by definition, refers respectively to the transportation sales, departures, and nonflight sales of *all* corporations that are included in the consolidated state return, with intercompany items such as capacity purchase agreement (CPA) payments eliminated. Accordingly, the Court concluded that it is irrelevant for purposes of the departure ratio that the taxpayer and the unitary affiliate at issue participated in a CPA by which the taxpayer sold all of the tickets for flights operated by the affiliate. The Court also concluded that, regardless of any contracts between the two corporations included in the same Oregon consolidated return, as a matter of law all that is relevant is:

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1. Where flights operated by either company departed; and
2. How much revenue from third parties either company collected.

On two other related issues, the Court separately concluded that:

1. Revenue from the taxpayer's CPAs with certain other companies that were not part of the taxpayer's Oregon consolidated return and from codeshare agreements was not revenue from "transporting passengers" because the taxpayer did not operate the flights at issue, and
2. Certain recurring gross receipts from its unitary affiliate's subsidy were not "transportation revenue" for Oregon corporate excise tax apportionment purposes.

Please contact us with any questions.

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