

Income/Franchise:

Oregon: Media Companies Deemed Interstate Broadcasters Subject to Special Apportionment

Case No. TC-MD 170037R, Or. Tax Ct. (8/17/22). In an unpublished order of the Magistrate Division of the Oregon Tax Court, a magistrate granted partial summary judgment for the Oregon Department of Revenue in a matter involving whether two entities within a media and entertainment business organization constituted “interstate broadcasters” as defined in Or. Rev. Stat. section 314.680(3) when they transmitted broadcast programming content to third parties, who subsequently delivered that programming content to viewing audiences located in Oregon. The two entities at issue were members of an affiliated group filing an Oregon consolidated corporate excise (income) tax return. In holding that they qualified as interstate broadcasters subject to special industry apportionment rules for Oregon corporate excise (income) tax purposes (*i.e.*, Oregon’s “audience factor” rules), the magistrate reasoned that Oregon’s broadcaster statutes only require that a taxpayer be engaged in the business of broadcasting; and the statutes do not require a contractual relationship or privity with the end user.

URL: <https://cdm17027.contentdm.oclc.org/digital/collection/p17027coll6/id/8973/rec/1>

The magistrate also held that based on Oregon Supreme Court precedent, the taxpayer’s sales factor must include all gross receipts from transactions and activities in the regular course of its trade or business rather than only receipts from “broadcasting.” The two entities at issue regularly transmitted one-way electronic signals by a variety of conduits to licensees or other persons with direct contractual relationships, and they obtained income from advertising and licensing from their programming in the regular course of their trade or business. The magistrate rejected the argument that the two entities were subject to Oregon’s standard apportionment formula and the corollary argument that the entities should therefore source certain receipts (*e.g.*, receipts from licensing, advertising, and retransmission) outside Oregon based on costs of performance. Please contact us with any questions.

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