

## Income/Franchise:

### Oregon Tax Court Addresses Inclusion of Commodities Hedging Receipts in Company's Sales Factor

*Case No. TC-MD 190031N*, Or. Tax Ct. (5/17/23). In an unpublished order of the Magistrate Division of the Oregon Tax Court, the presiding magistrate denied the taxpayer's motion for summary judgment and granted summary judgment to the Oregon Department of Revenue in a matter involving whether to include the taxpayer's commodities hedging receipts in its sales factor for Oregon corporate excise (income) tax purposes. In a 2021 ruling in the same case [see *Case No. TC-MD 190031N*, Or. Tax Ct. (4/14/21) and *State Tax Matters*, Issue 2021-16, for more details on this earlier ruling], the presiding magistrate held that the commodities hedging receipts arose from sales of intangible assets within the meaning of Or. Rev. Stat. section 314.665(6)(a); therefore, she reasoned that such gross receipts must be excluded from the taxpayer's sales factor unless they derive from the taxpayer's "primary business activity," a fact which had yet to be determined. After considering the case's underlying facts, the presiding magistrate now holds there was insufficient evidence to support a finding that any or all of the taxpayer's hedging receipts derived from its primary business activity of developing and producing crude oil and natural gas and refining and marketing those products for sale. According to the presiding magistrate, while the taxpayer's hedging program "played an important, and perhaps integral, supportive function," the receipts from its hedging program did *not* derive from its primary business activity and thus must be excluded from its sales factor. Please contact us with any questions.

**URL:** <https://cdm17027.contentdm.oclc.org/digital/collection/p17027coll6/id/9227/rec/2>

**URL:** <https://cdm17027.contentdm.oclc.org/digital/collection/p17027coll6/id/8374/rec/1>

**URL:** [https://dhub.blob.core.windows.net/dhub/Newsletters/Tax/2021/STM/210423\\_4.html](https://dhub.blob.core.windows.net/dhub/Newsletters/Tax/2021/STM/210423_4.html)

— Scott Schiefelbein (Portland)  
Tax Managing Director  
Deloitte Tax LLP  
sschiefelbein@deloitte.com

Sara Clear (Minneapolis)  
Tax Manager  
Deloitte Tax LLP  
sclear@deloitte.com

This communication contains general information only, and none of Deloitte Touche Tohmatsu Limited (“DTTL”), its global network of member firms or their related entities (collectively, the “Deloitte organization”) is, by means of this communication, rendering professional advice or services. Before making any decision or taking any action that may affect your finances or your business, you should consult a qualified professional adviser.

No representations, warranties or undertakings (express or implied) are given as to the accuracy or completeness of the information in this communication, and none of DTTL, its member firms, related entities, employees or agents shall be liable or responsible for any loss or damage whatsoever arising directly or indirectly in connection with any person relying on this communication. DTTL and each of its member firms, and their related entities, are legally separate and independent entities.

#### **About Deloitte**

Deloitte refers to one or more of Deloitte Touche Tohmatsu Limited (“DTTL”), its global network of member firms, and their related entities (collectively, the “Deloitte organization”). DTTL (also referred to as “Deloitte Global”) and each of its member firms and related entities are legally separate and independent entities, which cannot obligate or bind each other in respect of third parties. DTTL and each DTTL member firm and related entity is liable only for its own acts and omissions, and not those of each other. DTTL does not provide services to clients. Please see [www.deloitte.com/about](http://www.deloitte.com/about) to learn more.

Deloitte provides industry-leading audit and assurance, tax and legal, consulting, financial advisory, and risk advisory services to nearly 90% of the Fortune Global 500® and thousands of private companies. Our professionals deliver measurable and lasting results that help reinforce public trust in capital markets, enable clients to transform and thrive, and lead the way toward a stronger economy, a more equitable society and a sustainable world. Building on its 175-plus year history, Deloitte spans more than 150 countries and territories. Learn how Deloitte’s approximately 415,000 people worldwide make an impact that matters at [www.deloitte.com](http://www.deloitte.com).