

## Income/Franchise:

### Oregon: Taxpayer Must Use Special Industry Apportionment for Some Affiliates and Standard Method for Others

*TC Case No. 5431, Or. Tax Ct. (5/14/24).* In an unpublished order of the Regular Division of the Oregon Tax Court (Court) involving a group of several hundred affiliates with some qualifying as “interstate broadcasters” that collectively filed a consolidated Oregon corporate excise (income) tax return for the tax years ending in 2009 through 2012, the Court concluded that each affiliate must determine its own apportionment methodology – thereby allowing the interstate broadcaster affiliates to use Oregon’s special apportionment formula that relies heavily on an “audience ratio” while other affiliates that are not broadcasters must utilize the standard apportionment method, which generally looked to the “destination” of sales of tangible personal property and to the location of “income producing activities” for sales of services and intangibles. Under the facts, the non-interstate broadcaster affiliates conducted their activities outside Oregon and thus had no gross receipts attributable to Oregon. The Oregon Department of Revenue argued that the taxpayer’s interstate broadcaster status must be determined at the group level as a whole, which would have resulted in some portion of the gross receipts of all affiliates being attributed to Oregon because the Oregon audience ratio of the affiliates engaged in broadcasting would also be used to apportion the receipts of non-broadcaster affiliates. Siding with the taxpayer, the Court held that the second sentence of then Or. Rev. Stat. section 317.715(3)(b) required that a separate apportionment percentage be computed for each affiliate within the consolidated Oregon returns at issue. For this reason, the determination whether to apply Oregon’s interstate broadcaster apportionment methodology must be made separately for each affiliate rather than for the taxpayer as a group. Please contact us with any questions.

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