

Income/Franchise:

Oregon: State High Court Affirms that Company's In-State Activities Exceed P.L. 86-272 Protections

Case No. S069820, Or. (6/20/24). In a case involving whether a manufacturer's in-state activities conducted via independent contractors were protected under P.L. 86-272 for Oregon corporate excise tax purposes, the Oregon Supreme Court (Court) affirmed [see *State Tax Matters*, Issue 2022-34, for more details on the Oregon Tax Court's 2022 ruling in this case] that the pursuit of "prebook orders" by its in-state representatives invoking incentive agreement contractual provisions used by the company to ensure that its wholesaler customers treated each of those orders favorably went beyond the scope of "solicitation of orders" under P.L. 86-272 and such in-state activities were *not de minimis* under *Wrigley*. The Court highlighted that, under the facts, when the company contractually required wholesalers to "accept and process" prebook orders, the wholesalers understood that they must comply with that obligation or else they would face substantial economic penalties and lose the right to continue selling the manufacturer's products. As a result, the Court reasoned that, under the facts, the manufacturer's in-state representatives were doing more than "enabling" wholesalers to sell the underlying products to retailers; rather, they were "requiring" wholesalers to sell those products and facilitating those subsequent sales, which exceeded the scope of permitted "solicitation of orders." Please contact us with any questions.

URL: <https://cdm17027.contentdm.oclc.org/digital/collection/p17027coll3/id/11957/rec/1>

URL: https://dhub.deloitte.com/Newsletters/Tax/2022/STM/220826_4.html

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

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

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